

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN**

**CITY OF DALTON, GEORGIA
AND
WINGS OVER DALTON GA, LLC
P.O. Box 789
Rome, GA 30162**

THIS AGREEMENT entered into this ____ day of ____, 2019 between **WINGS OVER DALTON GA, LLC**, a Georgia limited liability company (hereinafter referred to as “WODG”) and **CITY of DALTON, Georgia**, a political subdivision of the State of Georgia (hereinafter referred as “DALTON”).

WHEREAS, WODG requested permission to undertake the responsibility for organizing, producing, executing and managing the inaugural 2020 “Wings Over Dalton GA” air show to be held on the inaugural date May 9-10, 2020 (the “Event”); at the Dalton Municipal Airport (KDNN); Dalton, GA (the “Airport”); and

WHEREAS, DALTON is the owner of certain real property located in Whitfield County on which is situated what is commonly known as Dalton Municipal Airport and adjacent City owned or controlled public spaces (collectively referred to as the “Property”).

WHEREAS, WODG desires to conduct the Event on the Airport property and DALTON is agreeable to providing the venue facility for the Event upon the terms and conditions set forth below; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **GRANT**. DALTON grants to WODG the right to conduct the annual Event upon the Airport facility and to undertake all actions preparatory and ancillary theretofore the Event, subject to the terms and conditions set forth herein.
2. **TERM**. This Agreement shall be effective as of the date executed by all parties hereto as shown above (the “Commencement Date”) and shall continue until September 30, 2020. WODG shall have a first right of refusal for a period of two years after the one-year initial term to conduct an air show at the Property.
3. **AVIATION EVENTS**. During the term of this agreement WODG shall have the right to produce and manage the Event at the airport. Any additional aviation related or competing events held at Dalton Municipal Airport within the term of this agreement may cause forfeiture of an annual EVENT and/or the agreement.
4. **ACCESS, MAINTENANCE and RESPONSIBILITY**.
 - A. **ACCESS**. WODG shall have access and use of that portion of the Airport, as determined by the Dalton Municipal Airport Manager (the “Manager”) in consultation with WODG as is necessary for

the Event, during the Event and three (3) weeks prior to and one (1) week after the Event. WODG (without permission from the Manager) shall not enter upon nor interfere with those areas and spaces of the Airport not approved or authorized by the Manager for entry and access. WODG shall not interfere with normal airport traffic or the function of the Airport at any time during the period of access except between the pre-determined preshow days and hours and show hours Thursday, Friday, Saturday and Sunday Event days. When necessary, scheduled air carrier flight operations will be accommodated at all times.

- B. **MAINTENANCE**. WODG shall be responsible for providing all adequate sanitation, solid waste, trash pick-up and public drinking water services for the patrons, guests, and spectators at the Event and bear the cost of the same. Unless conditions exist beyond their normal controls, WODG shall return the Airport to its original condition no later than 6:00 pm on the Wednesday following the Event.
- C. **PARKING**. WODG will only manage and service all internal airport parking area options. WODG recognizes that it is possible that adequate parking for this Event will not be available solely at the Airport. WODG and DALTON shall jointly determine in advance of the Event the anticipated parking requirements for the Event.

Should WODG and DALTON determine that there is not adequate parking to support the projected crowd attendance at the Airport for the Event, DALTON will arrange and manage any additional external parking facilities and shuttles needed for the Event. Any external parking and shuttle revenue generated from this requirement will be retained by DALTON.

DALTON will be responsible to prep (i.e. provide functional entry and exits for ingress and egress to the Event; mow grass; fill or provide appropriate safety barriers for holes, mark acceptable public parking area) all pre-determined parking areas prior to the Event. WODG will take all steps necessary to ensure that neither its staff nor patrons of the Event will park in or interfere with parking in areas specifically reserved for Non-Event related parking on the Airport.

WODG & DALTON will promote all approved internal and external parking areas through their available sources.

- D. **LICENSES**. WODG shall acquire at its expense, with appropriate cooperation from DALTON, all licenses or permits required to successfully execute the Event including, but not limited to any temporary malt beverage license required by City to provide beer and wine by the drink (Retail) at the Event. Where necessary, WODG may sub-contract with a local DALTON business(s) that maintains the necessary alcohol licenses or go through the necessary steps to acquire temporary stand-alone eligibility for WODG. WODG shall be solely responsible for the cost of acquiring all licenses or permits required to successfully execute the Event. WODG agrees that it will comply with all applicable laws, regulations, and ordinances pertaining to the promotion, advertising, and execution of the Event.

WODG shall provide all required licenses, permits, approvals and waivers from the Federal Aviation Administration (hereinafter referred to as the "FAA") and Department of Defense (hereinafter referred to as the "DOD") for the Event. DALTON will submit/provide required information to WODG for preparation of an operational safety plan to FAA Airport District Office (ADO) sixty days prior to the Event.

- E. **FACILITIES and UTILITIES.** WODG shall secure from DALTON, any needed access to property, public drinking water source, electrical power source, and normal communication net access in areas of the Airport controlled by DALTON. DALTON will assist to make available to WODG effective April 20 through May 20, 2020 (maximum 30 days) and subsequent air show events, as the DALTON TBD Hanger(s) or its agents, Air Show Offices, FAA Safety Briefing Room, and Support Facilities needed to support military and civilian performers.

DALTON will provide on the airport grounds a suitable location for a motor home unit to function as the temporary air show office. This site will include a minimum 50 amp electrical service; public water and sewer access. Effective dates: Nov. 1, 2019 to June 1, 2020.

WODG shall be responsible for any enhancements to the facility necessary to conduct the Event subject to DALTON approval. Additionally, the DALTON Municipal Airport Conference Room shall be available to WODG during air show week. Any projected airport construction and/or improvement projects shall be communicated to WODG during the current term of agreement as soon as possible. Any such project that substantially interferes with the Event shall permit WODG and DALTON to declare a Contract Year voided and of no further effect.

- F. **EMERGENCY MANAGEMENT AGENCY (EMA) SERVICES.** DALTON and WODG will organize and conduct sufficient joint planning meetings for the Event. The Emergency Management Agency (EMA) services, EMS, LE and ARFF providers will provide WODG and DALTON and any other individuals or groups involved with conducting the Event their agency plans. As a part of such planning, WODG will coordinate with DALTON the DRAFT plan for parking, emergency response and security at least two (2) months in advance of the Event.

i. DALTON shall make available to WODG a minimum of two (2) FAA, State, and International Council of Air Shows (ICAS) Aircraft, Rescue, & Firefighting (ARFF) units, services and equipment that are required as of the time of execution of the Agreement.

DALTON shall provide or make provision to WODG a minimum of two (2) Emergency Medical Services (EMS) units' services. Dalton will provide an EVENT first aid center during practice and show days (Fri-Sat-Sun).

DALTON shall provide or make provision to WODG a minimum (TBD) Law Enforcement (LE) services based on collaborations with LE leadership to execute a safe public air show event.

DALTON shall coordinate with city, county and DOT agencies to provide and place the necessary electronic directional signage boards for optimum traffic flow to and from the Event.

ii. The ARFF, EMS, Law Enforcement and Fire services will be provided to WODG without cost.

iii. It is anticipated that DALTON will work with Dalton Municipal Airport, its agents and employees, to provide the Emergency Management Agency (EMA) support needs to

include: ARFF and other emergency, law enforcement and fire services contemplated in this paragraph. DALTON shall be responsible for managing the roles and involvement of DALTON City departments and any other contractors so as to ensure the provision of all ARFF, Emergency Services and Law Enforcement functions are satisfied.

iv. WODG may at their expense provide supplemental ARFF services and operational support equipment as suggested by FAA, STATE, and ICAS standards (i.e. Fast Response Operations Safety Team (FROST), aircraft support/equipment/security, internal security and medical support).

- G. **VENUE SECURITY.** DALTON shall determine and make arrangements at their expense for adequate law enforcement security during the EVENT week (typically Wed-Mon) which needs to include: venue internal, external, traffic control and law enforcement services including 24 hour security for EVENT aircraft and venue through local law enforcement officers and/or a private security group for the entire term of the Event.

Any additional security services for event entry and crowd screening, private areas and other requirements deemed necessary for the EVENT will be the responsibility of WODG.

- H. **ADVERTISING.** WODG, DALTON and City of Dalton Tourism agencies will use its best efforts to promote the Event and volunteerism through local outlets, including but not limited to the DALTON City Chamber of Commerce, the Dalton Convention and Visitors Bureau, and the DALTON & Whitfield County Joint Development Authority. DALTON shall provide through its normal marketing program promotion for the Event, and will use its best efforts to encourage volunteerism through the use of web and social media marketing services. WODG will promote the event through its established programs, data bases and will list DALTON as participating partners of the Event and give proper acknowledgement.

- I. **FUELS.** DALTON or its agents shall have first right to sell all aviation fuels, jet fuels, and other petroleum products commonly known as petroleum, oils and liquids (POL) at the preferred tenant/high usage operator rate based on current market value for the air show for performers, static displays and air show patrons unless otherwise designated in writing by DALTON.

WODG shall have the right to provide automotive gasoline, engine oils, hydraulic fluids, diesel fuel and smoke oil products for EVENT operations for performers and other related event operational fuel needs.

- J. **AIR SHOW.** WODG shall conduct and manage the Event as a professional turn-key air show, to include jet, prop, parasail, airshow racing and ground demonstration team(s) when hosted as featured acts, artists, and/or twilight air show, including a show operations team, marketing-sponsors-media program, event insurance, portable restroom facilities, fencing, solid waste & sanitation services, performers, static displays, competition racing teams, exhibitors, retail food & beverage concessions, vendors, and associated activities as approved by DALTON.

- K. **WEATHER & INCIDENTS.** Weather, Fire, Strikes, Government Regulations, Causalities, Acts of God or other causes beyond WODG & DALTON control, WODG will not refund monies paid. DALTON waives any and all damages and claims for damages should the event be cancelled, except to cancellations resulting from the negligence of WODG. WODG, DALTON, FAA, Air Boss and EMA collectively will address any weather and/or show incident conditions.

There are no cancellation dates within the air show industry schedule, therefore no refunds are available due to weather and/or an air show incident. Show tickets shall remain valid for the next scheduled show.

Normally, air shows will continue due to weather by either adjusting EVENT start times and/or performers may adjust to a flat or medium show performance profile.

L. **SPONSORSHIP and COMMISSIONS.**

1. **DALTON Sponsorship Includes:**

- a. \$50,000 Title Sponsorship (Due upon signed agreement)
- b. Emergency Medical Services (EMS)
- c. Crash, Fire, Rescue (CFR)
- d. Law Enforcement (LE)
- e. Dalton Municipal Airport Usage (KDNN)
- f. *Hotel Rooms (300 Room Nights)
- g. **Rental / Courtesy Vehicles (30 Vehicles)

DALTON and/or *Contributors (customized sponsorship available) may together help subsidize hotel rooms and rental vehicle needs as follows:

*Provide WODG with a maximum of 300 room nights -- seventy-five (75) rooms x four (4) room nights (typical stay pattern).

- o *Depending on the annual performer lineup, normal Hotel room night usage ranges between 1200 - 1600. Performer Team Integrity (same hotel) is required. Therefore, the balance between comp and paid rooms will be the responsibility of WODG.*

**Provide WODG with a maximum of thirty (30) rental vehicles (i.e. cars, vans, trucks, etc.) and/or courtesy vehicles (i.e. cars, vans, trucks, etc.) for a minimum seven (7) day vehicle usage period. Any Rooms & Vehicles not committed for use towards show operations will be released no less than two (2) weeks prior to show start date.

- o *Depending on the annual performer lineup, normal rental car usage ranges from 50-70. Therefore, the balance between comp and paid vehicles will be the responsibility of WODG.*

2. **Commissions:**

A. **Reimbursement:**

WODG shall provide DALTON with an air show commission fee based on Event gross revenue monies generated per show year (Gross revenue is defined as the total air show receipts for ticket sales, cash sponsorships, commission fees, vendor fees, and exhibitor fees) generated from the revenue elements included and certified by the JLC AirShow Management certified public accountant agency of record. Dalton shall be entitled access to and audit of the financial records of WODG for the Event to confirm proper calculation of gross revenues. Gross revenue monies

do not include the DALTON Title Sponsorship, In-Kind Sponsorships, and/or sponsorship brokerage commission fees paid by either WODG or DALTON.

- WODG shall pay to DALTON a commission equal to fifteen percent (15) of gross revenues in excess of \$500,000 generated per show year Event.

B. Fuel Sales:

DALTON or its agent will not provide WODG an air show Event fuel usage commission fee. The fuel usage commission to WODG will be paid at the rate of zero (\$0.00) cents for every gallon of fuel (i.e. jet fuel & aviation gas) pumped for any air show related fuels sale (i.e. Performers, Static Displays, Support Aircraft, General Aviation Fly-In, etc.).

3. **INSURANCE.** WODG shall provide Event Coverage insurance to be in place a minimum two (2) days prior to the Event, three (3) days during the Event and two (2) days after the Event (the “Event Coverage Period”), minimum seven days (7) total coverage. WODG shall at all times during the periods of operation on the airport maintain at its expense occurrence based comprehensive General Liability Insurance to include WODG Event Insurance for use of the property and operations, issued by a company or companies which, in the sole discretion of DALTON, has sound financial responsibility with a minimum rating from A.M. Best of not less than A-VIII, is qualified to do business in the State of Georgia and which covers loss or damage resulting from accidents or occurrence related to the undertakings of WODG and the Event, with personal injury, death and property damage combined single limit liability of not less than Five Million (\$5,000,000) Dollars for each accident or occurrence which shall include coverage for all personal injuries and all property damages caused by both air show performers, static displays and event contracted aircraft in flight.

The type of insurance referred to in this paragraph is commonly known as Air Show Liability or Event Liability Insurance (“Event Coverage”). Proof of the comprehensive General Liability Event Insurance with combined single limit of not less than five million (\$5,000,000) dollars which includes coverage for all personal injuries and all property damages caused by both air show performers, static displays and aircraft in flight shall be provided to DALTON fourteen (14) days prior to the Event.

In addition, to the Event Coverage, WODG must provide the following: All vendors and subcontractors of WODG shall be required to have at least \$1,000,000 general liability including products liability and contractual liability, auto liability of \$1,000,000 including non-owned liability and workers compensation with employers liability limits not less than \$500,000/\$500,000/\$500,000.

All General Liability Insurance & Auto Liability referenced herein shall name DALTON and the Department its employees, volunteers and elected officials, and any agencies and/or individuals as required by the Airport Manager as an additional insured. General Liability, Auto Liability and Workers Compensation policies shall include waiver of subrogation in favor of DALTON and the Department.

4. **COMPLIANCE WITH LAWS.** WODG shall not cause or maintain any nuisance on the Airport. WODG shall diligently comply with all present and future laws, acts, rules, requirements, ordinances

and regulations, FAA and TSA regulations concerning the condition or use of the Airport and the improvements situated thereon, or any part thereof and also concerning the service of alcoholic beverages. WODG shall take all reasonable steps necessary to ensure that no consumption of alcohol by minors occurs and that no excess consumption of alcohol occurs during the Event.

5. **INDEMNIFICATION AND HOLD HARMLESS.** WODG agrees to indemnify, defend, and hold harmless DALTON, its successors, employees, attorneys, agents, officers, public officials, any agencies and/or individuals as required by the Airport Manager and assigns, from and against any and all claims, lawsuits, losses, demands, rights, obligations, assessments, orders, penalties, liabilities, costs, damages, expenses, and causes of action, including attorney's fees incurred by any or all of the indemnified parties or assessed against any or all of them, of whatever kind arising from or by reason of any personal injury, wrongful death, property damage, or other damages or other consequences of any kind, including costs, interest, attorney's fees and expenses, sustained, alleged by any third party, or by any WODG official, principal or employee or their successors, officers, guests, licensees, agents, employees or assigns, resulting from or in any way connected with the Event except where such personal injury, wrongful death, property damage or other damages or other consequences of any kind were caused by the sole negligence or fault of DALTON. The terms of this paragraph shall not constitute a waiver, in whole or in part, of any immunity or defense available to DALTON under applicable law.

6. **INDEPENDENT CONTRACTOR.** WODG is an independent contractor of and not an employee, partner or joint venture of or with DALTON. WODG, its employees, agents and representatives shall have no claim against DALTON for workers' compensation, unemployment compensation, vacation pay, sick leave, disability benefits, retirement benefits, social security benefits, or any other employee benefits of any kind all of which shall be the sole responsibility of WODG. WODG shall not withhold on behalf of DALTON any sums for income tax, unemployment insurance, social security, or otherwise pursuant to any law or requirement of any governmental agency, and all such withholding, if any is required, shall be the sole responsibility of WODG. WODG shall be solely responsible for the conduct of its personnel and agents in connection with their performance of WODG's obligations under the Agreement.

7. **TERMINATION.** Failure to perform timely, except for cause occasioned by an Act of God, government shutdown, sequestration, jet team non-availability and/or cancellation, or safety, shall permit WODG and DALTON to declare a Contract Year voided and of no further effect. WODG and DALTON shall have the right, upon sixty (60) days written notice, to terminate a Contract Year, and thereafter DALTON shall have no obligation to pay for services provided except up to the effective date of termination of this Contract Year. In either event, WODG will refund all amounts minus air show expenses to that point of termination that have been pre-paid either by, or on behalf of, DALTON, and no further amounts shall be owed by DALTON.

DALTON may, by written notice to WODG, terminate the Agreement in any of the following circumstances: (a) if WODG becomes insolvent or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any other law or statute of the United States or any state thereof, or consents to the appointment of a receiver, trustee or liquidator

of all or substantially all of its property, rendering the lessee unable to perform its obligations under the Agreement; or (b) if by order or decree of a court, WODG is adjudged bankrupt or an order is made proving a petition filed by any of the creditors; or if a petition in any part of the federal bankruptcy laws or action under any present or future insolvency law or statute is filed against WODG and it is not dismissed within forty-five (45) days after the filing thereof, rendering WODG unable to perform its obligations under the Agreement; or (c) if the interest of WODG under the Agreement is transferred to, passes to, or devolves upon, by operation of law or otherwise, any other person, firm, limited liability company, or corporation without the written approval of DALTON; or (d) any lien is filed against DALTON or WODG property because of any act or omission of WODG and is not removed within sixty (60) days; or (e) if WODG voluntarily abandons, deserts, vacates, or discontinues its operations in connection with the Event; or (f) if WODG fails to keep, perform and observe any other promise, covenant, and agreement set forth herein on its part to be kept, performed or observed, or so fails to make progress as to endanger the performance under the Agreement in accordance with its terms, within thirty (30) days after receipt of written notice of default hereunder from DALTON, except where fulfillment of its obligations requires an activity over a period of time and WODG has commenced to perform to the reasonable satisfaction of DALTON whatever may be required for fulfillment within thirty (30) days after receipt of written notice and continues such performance without interruption; or (h) if there is a significant change in the personnel or management of WODG, in DALTON's sole determination, so as to potentially jeopardize air show quality; or (i) if DALTON, in its sole discretion, determines that the Event should not take place; or (j) if the FAA or any other government authority having jurisdiction over activities at the Airport determines that the use of the Airport for the Event is incompatible with airport operations or is otherwise not available for an Event.

8. **NOTICES.** All notices and other communications hereunder shall be in writing, signed by the party making the same and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, addressed or at such other address as may hereafter be designated in writing by either party hereto. The time and date of personal delivery or three (3) days after the date on which mail is postmarked shall be the time and date on which such communication is deemed to be given.

To: **CITY of DALTON:**
Dennis Mock,
Mayor 300 West
Waugh Street
P.O. Box 1205
Dalton, Georgia 30721

To: **DALTON MUNICIPAL AIRPORT COMMISSION:**
Andrew Wiersma, Airport Manager
P.O. Box 1205
Dalton, Georgia 30721

To: **WINGS OVER DALTON GA, LLC:**
John L. Cowman, President
Box 789
Rome, Georgia 30162

9. **NO WAIVER.** The failure by either party to insist on any one or more of the terms or conditions

of this Agreement shall not be construed as a waiver or relinquishment for the future of any such term or condition.

10. **SUCCESSORS AND ASSIGNS.** The rights and obligations under this Agreement may not be assigned by either party without the written consent of the other party and shall be binding upon and shall inure to the benefit of the parties and their permitted successors or assigns.
11. **RELATIONSHIP OF THE PARTIES.** No express or implied term, provision or condition of this Agreement shall be deemed to create a partnership or joint venture amongst the parties hereto.
12. **INTERPRETATION.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of either party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted or authored such provision.
13. **SEVERABILITY.** In the event any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof.
14. **MODIFICATION.** No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification is in writing and signed by all parties hereto.
15. **ENTIRE AGREEMENT.** This Agreement contains the entire Agreement between the parties hereto, and no promises, agreements, conditions or stipulations not contained herein shall be binding upon any party hereto.
16. **APPLICABLE LAW; VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. In the event of a dispute, the venue for such dispute shall be Superior Court of Whitfield County, Georgia.
17. **REVENUE/PROCEEDS.**

A. WODG PROCEEDS. It is understood that WODG in its discretion shall control, collect and own all proceeds derived from the Event and all paid services, direct and indirect, arising there from including but not limited to:

- Tickets
- Parking (Internal Airport)
- Sponsorships
- Vendors & Exhibitors
- Food & Beverage
- Show Merchandise

B. PROMOTIONAL ACCESS. WODG to provide DALTON mutually agreed upon access passes to be provided to Airport Leadership, Tenants or Groups displaced by the Event.

18. MUTUAL ASSISTANCE. The parties hereto agree to assist each other and to enter in to any such further agreements as necessary to fulfill the intent of this agreement, i.e. “a successful Air Show and related events that are safe, exciting and successful.”

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement on the date and year first above written. The terms of this agreement are valid through Wednesday, October 7, 2019.

**WINGS OVER DALTON GA,
LLC**

**BY: _____
John L. Cowman, Jr., President**

CITY OF DALTON

**BY: _____
Dennis Mock, Mayor**

DALTON MUNICIPAL AIRPORT

**BY: _____
Andrew Wiersma, Airport Manager**