City of Waukesha Fire Department Air Show Emergency Services Contract

This Contract is made by and between the City of Waukesha, Wisconsin, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and the Commemorative Air Force Wisconsin Wing, 2525 Aviation Road, Waukesha, Wisconsin 53188-1691, referred to herein as the CAF. Together, the City and the CAF are referred to herein as the Parties.

Recitals

The CAF has obtained the permission of Waukesha County, the owner of the Waukesha County Airport, referred to herein as the Airport, for the use of the Airport for an event called the Gathering of Warbirds on May 25, 2019, which will include fly-bys, formation flights, airplane rides, static ground displays of aircraft and military vehicles, presentations and special events, and the service of food and refreshments.

In order to receive a waiver from the FAA for the Gathering of Warbirds, the CAF must provide dedicated fire suppression equipment and personnel on-site at the Airport grounds. CAF wishes to contract with the City for the provision of fire suppression equipment, services and personnel within the Airport grounds during the Gathering of Warbirds.

The City is willing to provide such services.

Now, therefore, in consideration of the mutual promises of the Parties stated herein, the City and CAF agree and contract as follows:

1. City Obligations. The City shall provide fire-suppression equipment designed and intended for structural firefighting, and firefighters trained for structural firefighting, on-site at the Airport and standing by from 10 a.m. until 4 p.m., or as necessary to perform the duties of this Contract, on Saturday, May 25, 2019. Equipment shall include two standby fire engines, an incident commander, and an on-duty ambulance. The fire engines shall be staffed with four firefighters, and the ambulance shall be staffed by two EMTs or paramedics, at the City's discretion. The incident commander shall be posted with the Air Boss during flight demonstrations and rides. City firefighters, EMTs, and paramedics shall respond to all incidents within the Airport grounds requiring emergency services in a manner appropriate to the nature of the incident, their training, and their available equipment.

2. Limitations on City Obligations.

- a. No Crash Rescue Services. The City shall provide standby fire-suppression equipment and personnel that are designed, intended, and trained for structural firefighting. The City will not provide crash rescue services as defined by the National Fire Prevention Association or the Federal Aviation Administration, and the City's equipment and services will not comply with FAR Part 139 or ARFF standards.
- b. Services Are Subject to Other Incidents in the City. The equipment and personnel being provided pursuant to this Contract are part of the City's regular on-duty fire and EMS services. Therefore, the City's obligations under this Contract are subject to needs for emergency services elsewhere in the City, and the City may withdraw equipment and personnel and direct them to other incidents in the City if necessary in the City's sole discretion. The City shall return equipment and personnel to the Airport when it is possible to do so, in the City's sole discretion.
- c. Services Are Subject to Determination of Unsafe Conditions. The City may withdraw its equipment and personnel from the Airport and cease performance of this Contract if, in the sole discretion of the City's incident commander, activities occurring on the Airport grounds in connection with the Gathering of Warbirds event present an unreasonable danger to participants or the general public. In such case, the incident commander may order that all Gathering of Warbirds event activities cease, and CAF shall

- comply with that order.
- d. Services Are Subject to Availability of Equipment. The City shall be excused from performance of this Contract if required equipment becomes unavailable because of mechanical breakdown or other cause of inoperability.
- **3. Aerobatics Are Prohibited.** CAF shall not allow, and no participant in the Gathering of Warbirds event shall perform, any maneuvers that are aerobatics, as that term is defined by the FAA.
- 4. Fees and Payment.
 - **a. Administrative Fee.** CAF shall pay the City an administrative fee of \$100, which shall not be refundable.
 - **b. Hourly Fee.** CAF shall pay the City an hourly fee of \$60 per man-hour of time spent in performance of duties under this Contract, even if performance extends beyond the times that the event is open to the public, and includes actual time spent in the safety briefing, placement of equipment in service, transportation to and from the event, and the refueling of vehicles.
 - c. Deposit. CAF shall pay the City a deposit of \$2260 in advance of the Gathering of Warbirds event. Of that amount, \$100 shall not be refundable, and the balance shall be applied to the hourly fee resulting from actual time spent in performance of this Contract. Any excess shall be refunded to the CAF within 30 days after the event, and any balance due shall be invoiced to the CAF, due and payable 30 days after the date of the invoice.
- 5. All Services Provided in the City's Discretion and at City's Direction. All firefighting and EMS services shall be performed in the sole discretion and at the direction of the City, and CAF shall not direct or control the City's performance of services under this Contract in any way.
- 6. Indemnification of City by CAF. CAF acknowledges that it is responsible for compliance with the FAA's rules and conditions imposed in connection with the granting of a waiver for the conduct of the Gathering of Warbirds event, including the provision of emergency firefighting and medical services. CAF shall be solely responsible to the FAA for any failure to comply with those rules or conditions, and the CAF shall indemnify and hold the City of Waukesha and its officers, officials, and employees harmless from any and all fines, penalties, damages, liabilities, or obligations of any kind, including court costs and actual attorney fees, arising from the failure of the services provided by the City pursuant to this Contract to meet any FAA rules, regulations, or conditions.
- 7. Governmental Immunities, Liability Limits, and Notice Requirements Preserved. Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or limitations of liability imposed by Wis. Stats. §893.80 or any other law.
- 8. Authority to Execute, Liability for Payment. The individual executing this Contract on behalf of the CAF warrants and represents that he is duly authorized to bind the CAF to this Contract, and that he will be personally liable for payment on behalf of CAF if he is not authorized to execute this Contract on CAF's behalf. CAF warrants and represents that the execution of this Contract is not prohibited by the CAF's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order.
- 9. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment, subject to statutory governmental immunities and liability limits.

- **10. Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
- **11. Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance.
- **12. Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

By Shawn N. Reilly, Mayor Date:	Attested by Gina L. Kozlik, City Clerk Date:
Commemorative Air Force, Wisconsin Wing	
By Stan Babicz, Wing Leader Date:	