

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

EXPERIMENTAL AIRCRAFT ASSOCIATION, INC., OSHKOSH, WISCONSIN

WHEREAS, the Federal Aviation Administration ("FAA"), an operating administration of the United States Department of Transportation, can furnish, directly or by contract, certain material, supplies, equipment, and services which Experimental Aircraft Association, Inc. ("EAA" or "Sponsor") requires, has funds available for, and has determined should be obtained from the FAA;

WHEREAS, it has been determined that competition with the private sector for provision of such material, supplies, equipment, and services is minimal; that the proposed activity will advance the FAA's mission; and that the FAA has a unique capability that will be of benefit to the Sponsor while helping to advance the FAA's mission;

WHEREAS, the authority for the FAA to furnish material, supplies, equipment, and services to the Sponsor upon a reimbursable payment basis is found in 49 U.S.C. § 106(l)(6) on such terms and conditions as the Administrator may consider necessary;

NOW THEREFORE, subject to the conditions stated herein, the FAA and the Sponsor mutually agree as follows:

ARTICLE 1. Parties

The Parties to this Agreement are the FAA and EAA.

ARTICLE 2. Type of Agreement

It is the FAA's position that this Agreement is an "other transaction" authorized under 49 U.S.C. § 106(l)(6). It is not intended to be, nor will it be construed as, a partnership, corporation, joint venture or other business organization, or a joint enterprise or agency relationship.

ARTICLE 3. Scope

- A. The purpose of this Agreement is to provide the terms by which EAA may obtain air traffic control ("ATC") services from the FAA. EAA will host its annual EAA AirVenture Oshkosh ("AirVenture") in Oshkosh, Wisconsin, for the indefinite

future. For AirVenture in the nine calendar years 2014 through and including 2022, the FAA will provide the Services, as defined herein, from approximately six (6) days before the commencement of AirVenture through approximately two (2) days after the end of AirVenture (the "FAA On-site Period"), to include travel, setup and take down before and after the actual event dates in each year. This Agreement provides funding for the FAA to establish and provide these Services. With this in mind, this project is titled:

"Provide Air Traffic Control Support for 2014-2022 EAA AirVenture Oshkosh, Oshkosh, Wisconsin"

- B. The FAA will provide services ("Services") to support the 2014-2022 AirVenture events for the following dates: July 28, 2014 through August 3, 2014, and, subject to EAA's sole discretion in scheduling each AirVenture, the approximately equivalent 7-day period in late July-early August each year thereafter. The Services will include ATC services and technical operational support, as listed in items 3.B.1 – 3.B.5 below. The FAA, as the agency charged with the responsibility for the safe and efficient flow of air traffic through the National Airspace System, will decide within its sole discretion the details of the listed services and support that are necessary and appropriate for AirVenture. Subject to the preceding sentence, the Services will include the following:
1. ATC services for the safe and efficient performance of all air traffic operations related to AirVenture at Wittman Regional Airport, Fond du Lac County Airport, and Fisk, Wisconsin;
 2. Technical operational support that is required for the ATC services.
 3. All waivers necessary and appropriate for the continuation of AirVenture in the format and with the general aviation-related features as operated for AirVenture 2013 (the "Waivers"), including traffic separation waivers, parallel runway waivers, and any other deviations from normal policy or regulatory requirements that are required or appropriate as part of the established procedure for AirVenture, using AirVenture 2013 as a baseline and including all necessary or appropriate modifications of such baseline to address changed circumstances or improved standards;
 4. Use of equipment in the control tower at Wittman Regional Airport, Fond du Lac County Airport, and Fisk, Wisconsin, including without limitation tower facilities, additional radio frequencies, and recording equipment (collectively, "Tower Equipment"); and
 5. Use of remote controller stations and any other equipment, safety resources and procedures that are required or appropriate as part of the established procedure for AirVenture, using AirVenture 2013 as a baseline and including all necessary or appropriate modifications of such baseline to address changed circumstances or improved standards (collectively, "Other Equipment").
- C. The Sponsor will reimburse the FAA for actual cost of the Services, as described in Article 6 hereof.

ARTICLE 4. Points of Contact; FAA Contracting Officer; Notices

A. FAA:

1. **FAA Point of Contact:** The FAA Central Service Area will perform the scope of work included in this Agreement. Peter Basso is the current Director of Financial Operations and the liaison/Point of Contact with the Sponsor and can be reached at (202) 267-8242. The FAA's liaison is not authorized to make any commitment, or otherwise obligate the FAA or authorize any changes, which affect the estimated cost, period of performance, or other terms and conditions of this Agreement. The Director of Financial Operations' contact information is:

Peter J. Basso III, Director of Financial Operations
800 Independence Avenue, SW Room 612
Washington, DC 20591
Telephone: 202.267.8993
Facsimile: 202.493.4191
Peter.Basso@faa.gov

2. **FAA Contracting Officer:** The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Irene Medina, who can be reached at (847) 294-8309.

B. Sponsor: The Sponsor's Point of Contact is:

Sean Elliott, VP-Advocacy & Safety
Experimental Aircraft Association, Inc.
3000 Poberezny Rd.
Oshkosh, WI 54902
Telephone: 920-426-6537
Facsimile: 920-426-6560
sellott@eaa.org

- C. **Notices.** Either Party may give notices to the other in writing addressed to the respective Points of Contact stated above (including notice of a change in a Party's Point of Contact). Notices may be given by U.S. Postal Service, recognized national commercial courier, facsimile or e-mail, or in person, and will be deemed received when actually received by the receiving Party.

ARTICLE 5. Non-Interference with Operations

The Sponsor understands and hereby agrees that any relocation, replacement, or modification of any existing or future FAA facility, system, and/or equipment covered by this Agreement during its term or any renewal thereof made necessary by Sponsor improvements, changes, or other actions which in the FAA's reasonable opinion interfere

with the technical and/or operations characteristics of an FAA facility, system, and/or piece of equipment will be at the expense of the Sponsor, except when such improvements or changes are made at the written request of the FAA. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Sponsor or the FAA, the Parties will mutually determine funding responsibility.

ARTICLE 6. Costs to be Reimbursed

EAA will reimburse the FAA for only the actual cost of "Travel," "Overtime," "Supplies," and "Overhead" (all defined below), directly related to the Services and excluding direct labor costs, Flight Standards Support, or other services and outreach activities not requested by EAA (collectively, referred to herein as the "Reimbursable Costs"). Travel, Overtime, Supplies and Overhead shall be subject to the following terms and conditions:

- A. Travel. Travel reimbursement means, and will be limited to, transportation, lodging and per diem travel costs of the "Essential Personnel" (defined herein). Essential Personnel shall mean: (i) only those FAA air traffic controllers and technical operations personnel who, in the sole discretion of the FAA, are necessary to provide safe and efficient ATC services for AirVenture; and (ii) those FAA supervisory personnel who are necessary for the safe and efficient functioning of the controllers and technical operations personnel described in 6.A.(i), above. Transportation, lodging and per diem costs to be reimbursed for the Essential Personnel will be strictly in accordance with the FAA's then-current Travel Regulations for FAA staff as supplemented by the Federal Travel Regulations.
- B. Overtime. Overtime means:
 - (i) The FAA's actual cost of overtime paid to FAA staff in their respective home locations as is necessary to cover the normal duties of Essential Personnel who are providing the Services ("Backfill Overtime"); and
 - (ii); In limited circumstances (in cases where, in the FAA's good faith judgment, use of on-site Essential Personnel and paying them some overtime would be less expensive than adding more Essential Personnel), of which the FAA shall attempt to notify EAA in advance, the FAA's actual cost of overtime for Essential Personnel who are providing Services.
- C. Supplies. Supplies shall mean those supplies that are essential for the provision of the Services, and shall be reimbursed to the FAA at the FAA's actual cost.
- D. Overhead. FAA Overhead will be applied in accordance with FAA's general overhead policies to cover the FAA's cost for administration support. At the effective date of this Agreement, the FAA's general overhead policy requires overhead charges of sixteen per cent (16%) for overtime and six per cent (6%) for travel and per diem.

Upon EAA's request from time to time, the FAA will provide to EAA a complete and current copy of the FAA's Financial Manual including without limitation such FAA general overhead policies.

- E. Annual Cost Control Review. The FAA and EAA will use their best efforts to reduce the cost of the Services without compromising safety or efficiency, and will meet to cooperate on the operational specifics of each year's AirVenture event by December 1 of the year preceding the event, except for 2014, in which the meeting shall occur on or before March 31, 2014. EAA will have the opportunity to provide input and comment; however, the FAA will have the final decision on ATC staffing within the terms and conditions of this Agreement.
- F. Estimate. Each year, the FAA shall provide EAA with its best estimate ("Estimate") of the actual costs to be reimbursed for that year's AirVenture, not later than March 1 of that year, except for 2014, in which the meeting shall occur on or before May 1, 2014. The Estimate shall be supported by a detailed list of the FAA's planned Essential Personnel, by job title and pay grade for the Services, and a detailed list of all Supplies, including estimated cost per item, that the FAA plans to use to provide the Services that year. The FAA shall promptly respond to any reasonable questions or inquiries from EAA about the Estimate through EAA's Point of Contact. Following any such questions or inquiries and responses thereto and the FAA's good faith consideration, the FAA shall provide EAA with its "Final Estimate," which shall be the basis for prepayment as described in Article 8. The FAA is not legally bound by this Agreement to limit its cost reimbursement charges to either the Estimate or the Final Estimate.
- G. FAA's Expectation of Essential Personnel. Subject to all the provisions of this Section, the FAA expects that the number and assignment of Essential Personnel in any year covered by this Agreement will not exceed the number and assignment of personnel used by the FAA to provide the Services for AirVenture 2013. This expectation is based on the Parties' mutual assumption that future AirVenture air traffic operations will not expand substantially beyond the level of activity for AirVenture 2013. Notwithstanding the foregoing, the FAA shall determine in its sole discretion the appropriate personnel for AirVenture each year during the Term hereof.
- H. Most Favored Customer.
1. The FAA represents that all of the benefits and terms granted herein by the FAA to EAA are at least as favorable as the benefits and terms (other than occasional *de minimis* additional benefits) granted by the FAA to any recipient of FAA ATC services for an aviation special event (or substantially equivalent term as used from time to time in the FAA's "Guidance for Entering into Reimbursable Agreements for Aviation Special Events" or any subsequent or substitute FAA document) ("Aviation Special Event"). The Parties agree that any additional benefit that has a cost to the FAA of 5% or less of the prior year's payment under this Agreement is, per se, *de minimis* and that the remedy to which EAA is

entitled is a credit of the same dollar amount of the other than *de minimis* additional benefit.

2. Both Parties understand and accept that the FAA may make changes to its reimbursable policy for future Aviation Special Events. To the extent that such changes provide any terms and conditions that are more favorable to any Aviation Special Event sponsor or operator than those contained herein, the FAA shall promptly notify EAA of the existence of such more favorable benefits and terms, and EAA shall have the right to receive the more favorable benefits and terms immediately, and at the request of EAA the terms and conditions of this Reimbursable Agreement shall be modified to provide EAA with those more favorable terms and conditions.

ARTICLE 7. Period of Agreement and Effective Date; Anti-Deficiency

This Agreement supersedes and nullifies any previous agreements between the Parties on the subject matter (for the avoidance of doubt, not including the Reimbursable Agreement between the Parties dated June 12, 2013). The Effective Date of this Agreement is the date of the last signature. The Term of this Agreement shall commence on the Effective Date and expire when the final invoice for ATC Services for AirVenture 2022 is provided to the Sponsor and payment therefor is received by the FAA from the Sponsor as provided for in Article 8, Section A hereof.

If EAA ever decides for any reason (whether during the Term of this Agreement or upon its termination without being extended or superseded), that it would be in its best interests to obtain ATC services from a private contractor, the FAA will use reasonable efforts to support EAA in making the transition to a private contractor, including without limitation granting all Waivers and regulatory exemptions and providing use of the Tower Equipment and the Other Equipment on a reasonable basis.

No provision of this 2014 Reimbursable Agreement shall be interpreted to require obligation or payment of funds by FAA in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341, Title 31 U.S.C. § 1342, and Title 31 U.S.C. § 1517 .

ARTICLE 8. Reimbursement Payment and Accounting Arrangements

- A. The Sponsor will pay the Reimbursable Costs for each year in two installments. The first installment will be due not later than forty-five (45) days before the first day of AirVenture for the year in question, in the amount of one-half (1/2) of the Final Estimate for such year. The second installment will be due thirty (30) days after EAA's receipt of the FAA's final invoice showing in detail (as described herein) the costs actually incurred in accordance with this Agreement, and will be in the amount of the balance due as shown on the final invoice. The FAA shall provide the final invoice to EAA no later than September 10 of such year. If EAA disagrees with any item on the final invoice it will advise the FAA of such disagreement within thirty (30) days after receipt thereof, and will pay the FAA the undisputed amount by the

final payment due date. Thereafter, EAA and the FAA will use their best efforts to resolve the disagreement, and EAA will promptly pay the FAA the agreed amount due when the disagreement has been resolved. The final invoice will include a detailed list of all FAA personnel who were engaged in providing the Services, by job title and service grade, and a detailed list of all Supplies used, including the actual cost per item, all in conformance to the Final Estimate with any discrepancies noted, explained and substantiated. The Sponsor will send the first installment payment to the Accounting Division listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. The advance payment by the Sponsor for any calendar year must be received before the FAA incurs any obligation to implement this Agreement for such calendar year.

- B. The Sponsor certifies that, each year of the Term of this Agreement, arrangements for sufficient funding will have been made promptly after receipt of the Final Estimate to cover the Reimbursable Costs.
- C. The Accounting Division is identified by the FAA as the billing office for this Agreement. Each year, the Sponsor will send the first installment payment to the Accounting Division shown below. Except as otherwise provided in Article 8, Section A hereof, the Sponsor will submit the final balance due within thirty (30) days after receipt of the final invoice to the Accounting Division shown below. All payments must include the Agreement number, Agreement name, Sponsor name, and project location. Payments may be made by check, wire transfer, ACH/electronic funds transfer, or such other means as is agreed by the Parties.

The mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
P.O. Box 25082
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-9585

The Sponsor hereby identifies the office to which the FAA will render bills for the Services incurred as:

Sean Elliott, VP-Advocacy & Safety
Experimental Aircraft Association, Inc.
3000 Poberezny Rd.
Oshkosh, WI 54902
selliott@eaa.org
920-426-6537

- D. If this Agreement is modified in accordance with Article 9, and such modification causes the FAA to revise its Final Estimate for the AirVenture immediately following the modification, the FAA and the Sponsor agree that the Sponsor's prepayment will be adjusted, by additional payment or partial refund, to reflect the revised Final Estimate. The Sponsor will send a copy of the executed modification of the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment, if any. Any additional Services identified in the modification cannot start until receipt of the additional advance payment.
- E. The Sponsor agrees to furnish two (2) golf carts for use at AirVenture at no cost to the FAA, for the use of FAA technical operations personnel to facilitate access to and maintenance of the airspace systems in support of AirVenture for the FAA On-site Period

ARTICLE 9. Changes and Modifications

Changes and/or modifications to this Agreement will be formalized by a written modification that will state in detail the exact change. Any modification to this Agreement will be executed in writing and signed by the authorized representative of each Party. The individuals signing this Agreement and any subsequent modification(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as modifying or otherwise affecting the terms of the Agreement. Either Party to this Agreement may request that it be modified, whereupon the Parties will consult to consider such modifications.

ARTICLE 10. Legal Authority

This Agreement is entered into under the authority of 49 U.S.C. § 106(l)(6), which authorizes the Administrator of the FAA to enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator may consider appropriate. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

ARTICLE 11. Dispute Resolution. Where possible, disputes pertaining to interpretation of the terms of this Agreement (other than this Article 11) or arising from an alleged breach of this Agreement will be resolved by informal discussion between the Parties. If informal negotiations fail, the FAA Administrator will issue a decision that is not subject to further administrative review and is a final agency decision.

ARTICLE 12. Warranties

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 13. Insurance

The Sponsor will arrange by insurance or otherwise for the full protection of itself from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf.

ARTICLE 14. Limitation of Liability

To the extent permitted by law, the Sponsor agrees to indemnify and hold harmless the FAA, its officers, agents, and employees from all third party causes of action, suits or claims arising out of the Services, to the extent that any such cause of action, suit or claim arises directly from the negligence or other fault of Sponsor. To the extent that such third party claim is determined to have arisen from the act or omission by an officer, agent, employee, or contractor of the FAA acting within the scope of his or her employment or contract, this hold harmless obligation will not apply and the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., will control. The FAA assumes no liability for any third party losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf. In no event will either Party hereto be liable for claims for punitive damages.

ARTICLE 15. Civil Rights Act

The Sponsor will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

ARTICLE 16. Security

In the event that the security office determines that the security requirements under FAA Order 1600.72A applies to work under this Agreement, the FAA is responsible for ensuring that security requirements, including compliance with AMS clause 3.14-2, Contractor Personnel Suitability Requirements (January 2011) are met.


ARTICLE 17. Entire Agreement

This document is the entire Agreement of the Parties, who accept the terms of this Agreement as shown by their signatures below. In the event the Parties duly execute any modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency.

AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

**EXPERIMENTAL AIRCRAFT
ASSOCIATION, INC.**

SIGNATURE 

NAME Irene Medina

TITLE Contracting Officer

DATE March 20, 2014

SIGNATURE 

NAME Sean Elliott

TITLE VP-Advocacy & Safety

DATE March 19, 2014