

Case No. _____

**In the United States Court of Appeals
For the Seventh Circuit**

Experimental Aircraft Association, Inc.

Petitioner,

vs.

The Federal Aviation Administration and the United States of America,

Respondents.

Petition for Review and Other Relief

Experimental Aircraft Association, Inc.,
Petitioners

Date: July 3, 2013

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: _____

Short Caption: EXPERIMENTAL AIRCRAFT ASSOCIATION, INC. v. FEDERAL AVIATION ADMINISTRATION, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

EXPERIMENTAL AIRCRAFT ASSOCIATION, INC.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

SmithAmundsen, LLC

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: /s/ Alan L. Farkas Date: July 3, 2013

Attorney's Printed Name: Alan L. Farkas

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes X No _____

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

EXPERIMENTAL AIRCRAFT)	
ASSOCIATION, INC.,)	
)	
Petitioner,)	
vs.)	Case No.
)	
THE FEDERAL AVIATION)	
ADMINISTRATION, and the UNITED)	
STATES OF AMERICA,)	
)	
Respondents.)	

PETITION FOR REVIEW AND OTHER RELIEF

Petitioner, EXPERIMENTAL AIRCRAFT ASSOCIATION, INC. (“EAA”), by and through its attorney, Alan L. Farkas of SmithAmundsen Aerospace, pursuant to 49 USC § 46110, presents the following Petition for Review and Other Relief.

INTRODUCTION

Every summer, more than 500,000 people and approximately 10,000 aircraft travel to central Wisconsin to attend EAA’s annual convention and member meeting known as “AirVenture.” In addition to the Federal taxes paid by all citizens, to support the operation of Federal agencies, including the FAA, each of these aircraft operators pays specially earmarked aviation fuel taxes throughout their journey. As envisioned by Congress, these aviation fuel taxes fund the Federal Aviation Administration (“FAA”) in a manner that automatically distributes the cost of Air Traffic Control (“ATC”) in proportion to their use of the national airspace system. Thus, while this large influx of air traffic into Oshkosh, Wisconsin places greater demands on ATC than the service level typically required for this region, the aircraft that use more ATC services also pay for the services they receive as they pay their aviation fuel

taxes. This funding method has allowed the FAA to support AirVenture for 60 years without imposing any additional costs on EAA.

Unfortunately, this year, the FAA demanded significant payment from EAA to provide the ATC staffing necessary to ensure safe arrival and departure from AirVenture. Curiously, the FAA's demand for payment from EAA comes on the heels of recent legislation specifically outlawing user fees and granting the FAA unique flexibility to guarantee uninterrupted ATC service. The FAA's determination to augment the funding mechanism established by Congress through user fees was adopted without standard notice and comment or any other form of formal administrative rulemaking. Accordingly, the FAA's demand for payment from EAA is procedurally improper and substantively unlawful.

EAA turns to this Court to review the FAA's actions. This Petition seeks to reverse the FAA's decision to seek payment from EAA for ATC services. EAA further seeks return of the fees paid and for recovery of the attorney fees and costs incurred in this matter.

JURISDICTION AND VENUE

1. EAA is a not-for-profit Wisconsin Corporation with its principal place of business in Oshkosh, Wisconsin. EAA is an association of 175,000 members. Its members are people who enjoy the world of flight in all its facets, from flying all sizes and types of aircraft, to building their own aircraft and restoring vintage aircraft, to welcoming youth to aviation and providing knowledge and skills to others. EAA's stated mission is to: "Grow participation in aviation by sharing the spirit of aviation." Its members are from all economic and age sectors, ranging from machinists to CEOs, and retirees to students. Their bond is their common passion for aviation, and its joy, innovation, sense of achievement, and inspiration. The members of EAA have authorized EAA to speak and act on their behalf.

2. On May 8, 2013, the FAA issued a final Order to EAA when the Administrator and/or his representatives told EAA's Chairman that the FAA would not provide the necessary and customary ATC services at the 2013 AirVenture, unless EAA would execute a contract and agree to "reimburse" the FAA for certain costs and expenses. The terms of the subject Order were subsequently memorialized in the "Non-Federal Reimbursable Agreement Between Department of Transportation Federal Aviation Administration and Experimental Aircraft Association, Inc., Oshkosh, Wisconsin. (Exhibit A, "Reimbursable Contract.").

3. The ATC services subject to the FAA Order will be provided at the 2013 AirVenture. This year, EAA's annual convention, membership meeting, educational forum, trade-show, and fly-in are scheduled to be held from July 29, 2013 through August 4, 2013, at Wittman Regional Airport in Oshkosh, Wisconsin. To support incoming and outbound air travel, the required ATC services will extend a few days before and after AirVenture.

4. The FAA has further indicated it will demand similar contracts for ATC services at even greater levels of reimbursement for future EAA AirVentures.

5. 49 USC § 46110 states that review of FAA Orders shall be filed in the United States Court of Appeals for either the District of Columbia or the circuit in which the Petitioner resides, within 60 days of entry of the Order.

6. EAA has a substantial interest in the Order in that the FAA demands payment from EAA at the threat of diminished or cancelled ATC services, threatening the safety of approximately 20,000 take-offs and landings, including flights by EAA members, and the threat of insufficient ATC support further threatens EAA's finances, programs, membership level, and EAA's continued existence.

7. To be reviewable under § 46110, “an ‘order’ must be final, but need not be a formal order, the product of a formal decision-making process, or be issued personally by the Administrator.” *Aerosource, Inc. v. Slater*, 142 F.3d 572, 578 (3rd Cir. 1998). The order “also must impose an obligation, deny a right, or fix some legal relationship.” *Id.* Letters and other communications can be final orders depending on the surrounding circumstances and other indicia of finality. *Id.* at 577. Courts will look to the effect and language of any such purported order. *Id.* Another frequently mentioned requirement for an “order” is the existence of an administrative record sufficient for meaningful appellate review. *Id.* at n. 10. However, as the *Aerosource* Court noted, “while the courts recite that an appealable order must be based on a record sufficient to permit a meaningful review, they regularly find the record adequate for that purpose.” *Id.* In fact, the Seventh Circuit recently disregarded concerns about the sufficiency of the administrative record, noting that the sufficiency of the record can be discussed on appeal, and that the appellate court can remand to the agency or a special master to further expand the record. *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616, 629 (7th Cir. 2007).

8. The FAA’s demand for payment from EAA for ATC services at the 2013 AirVenture and for all future AirVentures, at even greater levels, qualifies as an “order” under § 46110(a) because it imposes an obligation on EAA, denies EAA certain rights, fixes the legal relationship between the FAA and EAA, and represents a new interpretation of the FAA’s authority.

9. The additional claims described herein are appropriately lodged along with the Petition for Review because this court has exclusive jurisdiction of all claims that are inescapably intertwined with the FAA order. *See, Zephyr Aviation, LLC v. Dailey*, 247 F.3d 565, 571-72 (5th Cir. 2001) (*citing Foster v. Skinner*, 70 F.3d 1084, 1089 (9th Cir. 1995); *Green v.*

Brantley, 981 F.2d 514, 521 (11th Cir. 1993), and *Gaunce v. Devincentsis*, 708 F.2d 1290, 1292-93 (7th Cir. 1983)).

THE FAA LACKS AUTHORITY TO DEMAND PAYMENT FROM EAA

10. The FAA claims authority to enter into the Reimbursable Contract pursuant to 49 USC §106 (l)(6) (“subpart 6”), a paragraph which grants the FAA general authority to enter into contracts (Exhibit A). Subpart 6 provides:

The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551 (1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

49 USC §106 (l)(6).

11. Of course, subpart 6 must be read in context of the authority and limitations granted to the FAA. “Interpretation . . . depends upon reading the whole statutory text, considering the purpose and context of the statute” *Senne v. Vill. Of Palatine, Ill.*, 695 F.3d 597, 601 (7th Cir. 2012) (quoting *Dolan v. United States Postal Serv.*, 546 U.S. 481, 486 (2006)). 49 USC §106 is a lengthy piece of legislation that broadly sets out the framework of FAA authority, the scope of its responsibilities, staffing, and management. At paragraph (k), 49 USC §106 addresses appropriations for operations, but 49 USC §106 otherwise addresses only expenditures (such as compensation to staff), not funding of the FAA or its services.

12. Funding of FAA and ATC services is specifically addressed by Congress. Broad funding of various FAA projects is found in 49 USC §§ 48101, 48102, 48103, and 48104 through appropriations out of the Airport and Airway Trust Fund. The Airport and Airway Trust

Fund was created to fund specific FAA activity. *See* 26 USC. § 9502. Congress explicitly directs the FAA to use the Airport and Airway Trust Fund to fund the operation of air traffic control, air navigation, communications, and supporting services for the airway system. 26 USC § 9502(d)(1)(B), as well as any related administrative expenses. 26 USC § 9502(d)(1)(C). *See also*, 49 USC § 48104. Congress identifies specific aviation fuel taxes as the funding source for the Airport and Airways Trust Fund, 26 USC § 9502 (b), and Congress emphasizes that only those funding sources or expenditures explicitly listed in this section of the statute should be recognized. 26 USC § 9502 (e).

13. Congress has also specifically addressed the fees that can be charged by the FAA. In 49 USC § 45301, Congress authorizes the FAA to establish a schedule of fees and a collection process for “air traffic control and related services” for civilian aircraft “that neither take off from, nor land in, the United States,” and “[s]ervices . . . provided to a foreign government or services provided to any entity obtaining services outside the United States” 49 USC §45301. Congress similarly addressed fees for pilot certificates, aircraft registration, and various submissions. 49 USC §45302.

14. When placed in context with the above authorities, it should be clear that Congress did not intend the FAA to read subpart 6 as a broad grant of authority to obtain additional funding for traditional ATC services. There would be no need for Congress to specifically address funding, appropriations, and fees for ATC and other specific services if the FAA had the authority to self-fund pursuant to subpart 6. To the contrary, subpart 6 is properly understood as a grant of authority for the FAA to act similarly to private enterprises in obtaining equipment and services necessary to support its mission. Courts “are to make every effort to interpret provisions so that other provisions in the statute are not rendered . . . superfluous, or

meaningless.” *Broad. Music, Inc. v. Roger Miller Music, Inc.*, 396 F.3d 762, 769 (6th Cir. 2005); *see also Ippolito v. WNS, Inc.*, 864 F.2d 440, 451 n.11 (7th Cir. 1988). Not only would the broad interpretation of subpart 6 advanced by the FAA render several other statutory sections superfluous, but funding ATC services (at AirVenture) through the FAA’s contractual powers would circumvent the system envisioned by the Airport and Airways Trust.

15. In addition to the above provisions, through recent legislation, Congress has made it clear that it views itself as the sole authority on the establishment and sources of FAA funding. Through the Reducing Flight Delays Act of 2013 Congress provided the Department of Transportation “with the flexibility to transfer certain funds to prevent reduced operations and staffing of the Federal Aviation Administration” Reducing Flight Delays Act of 2013, Pub. L. No. 113-9, 127 Stat. 443 (2013). This legislation was passed in the wake of the recent sequester to “restore reliable and safe service in the commercial air traffic system by reducing or eliminating employee [FAA air traffic controller] furlough days. 159 Cong. Rec. H2364-02 (2013) (statement of Rep. Tom Latham). Yet, in the most recent appropriations, Congress has also set boundaries on FAA funding: “None of these funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act.” Consolidated and Further Continuing Appropriations Act 2012, Pub. L. No. 112-55, 125 Stat. 552 (2011), *amended by* Pub. L. No. 112-175, 126 Stat. 1313 (2012), Pub. L. No. 113-6, 127 Stat. 198 (2013) (appropriation provided through Sept. 30, 2013). “Notably, this legislation does not include language imposing disproportionate and onerous user fees on the general aviation industry Rather, this legislation preserves the current fuel tax levels, an efficient

and effective funding mechanism that accurately reflects general aviation's use of the system.”
158 Cong. Rec. S333-02 (2012) (statement of Sen. Pat Roberts).

16. The payments demanded from EAA are indeed user fees, prohibited by the above cited appropriations. The United States General Accounting Office (“GAO”) defines user fees as: “A fee assessed to users for goods or services provided by the federal government. User fees generally apply to federal programs or activities that provide special benefits to identifiable recipients above and beyond what is normally available to the public. User fees are normally related to the cost of the goods or services provided. . . .” U.S. Gov't Accountability Office, GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process (2005). As the intent of the FAA Order is to obtain payment from EAA for the expenses directly related to providing services to EAA's members and invited guests at AirVenture, the “reimbursement” fits squarely within the definition of user fees. Of course, if the demanded payment is not a user fee, then it must be a tax, and taxes can only be levied by Congress, not Executive Agencies. *See, Thomas v. Network Solutions, Inc.*, 176 F.3d 500, 505 (D.C.Cir. 1998).

17. Finally, regardless of the proper characterization of the sums demanded by the FAA, there should be no doubt that the FAA is seeking to augment the appropriations intended by Congress to fund ATC services (as discussed above). Yet, as recognized by the GAO, Executive Agencies are prohibited from augmenting their appropriations. *See FCC-Acceptance of Rent-Free Space and Services at Expositions and Trade Shows*, 63 Comp. Gen. 459 (June 28, 1984) (“[T]he theory, propounded by the accounting officers of the Government since the earliest days of our nation, is designed to implement the constitutional prerogative of the Congress to exercise the power of the purse; that is, to restrict executive spending to the amounts appropriated by the Congress.”). “The general theory of ‘augmentation’ is a corollary to the constitutional

requirement that '[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law....' U.S. Const., Art. I, sec. 9. The theory seeks to assure that the executive branch limits its expenditures to appropriations it receives. The control over executive action inherent in passing limited appropriations would be severely eroded if agencies could 'augment' the funds they are appropriated." Carrier-Provided Computers for Electronically Filing Tariffs with the ICC, 70 Comp. Gen. 597 (June 28, 1991).

THE FAA ORDER SHOULD BE SET ASIDE

18. For the reasons described above, the FAA never had the authority to demand payment from EAA to provide ATC services at AirVenture.

19. The FAA's decision to seek payment from EAA and to present the Reimbursable Contract to EAA was made without any notice to the public, distribution of proposed rules, or any authorized procedure, and is thereby unlawful under 5 USC § 706(2)(D).

20. The FAA's Order is arbitrary, capricious, an abuse of discretion, and otherwise not in accord with the law, and is thereby unlawful under 5 USC § 706(2)(A).

21. The FAA's Order is contrary to EAA's constitutional rights and privileges, and is thereby unlawful under 5 USC § 706(2)(B).

22. The FAA's Order is in excess of the FAA's statutory jurisdiction, authority, or limitations, or short of statutory right, and is thereby unlawful under 5 USC § 706(2)(C).

23. The FAA's Order is unsupported by substantial evidence, and is thereby unlawful under 5 USC § 706(2)(E).

24. The FAA's Order is unwarranted by relevant facts, and is thereby unlawful under 5 USC § 706(2)(E).

25. The FAA demanded payment from EAA for services that the FAA was already obligated to provide.

26. The funds unlawfully taken from EAA should be returned by the FAA and/or the United States of America.

27. EAA is entitled to recover its costs and attorney fees in pursuit of this matter from the FAA pursuant to the Equal Access to Justice Act (EAJA) 5 USC § 504.

28. The FAA provided EAA with no meaningful opportunity for review or objection to its demand for payment. The Reimbursable Contract was presented to EAA with the express threat that the FAA would not provide adequate ATC services if EAA failed to capitulate and execute the “agreement.” EAA executed the Reimbursable Contract under protest and under duress, knowing that thousands of members would likely travel to the event area even if the event would be officially cancelled, at great threat of physical harm, and because cancellation of its annual meeting or holding a curtailed event would threaten the very existence of EAA, as further set out in EAA’s notice of its objections (Exhibit B).

29. The FAA’s actions violate EAA’s rights of Substantive and Procedural Due Process, and Equal Protection, as guaranteed by the Fifth Amendment of the United States Constitution.

30. These various Constitutional violations arise from the FAA’s demand for payment from EAA as a condition precedent for the FAA’s provision of ATC services substantially similar to the services the FAA provides to other persons and events without demanding additional fees, and from the FAA’s doing so without employing any sort of formal policy or rule making process, and without any legitimate or rational government interest. Many events across the country cause air travel to a particular city or region to spike for a limited period of

time. The FAA necessarily provides additional ATC personnel and equipment to these areas to insure that all travelers are able to enter and exit the event safely, and it does so without additional charge. Of course, all increased travel involves increased fuel consumption and increased payment of the fuel taxes that support ATC services.

31. Pursuant to 42 USC §1988, EAA is entitled to recover the reasonable costs and attorney fees expended in the vindication of its rights from respondents.

32. Pursuant to 28 USC § 2201, the Declaratory Judgment Act, the Reimbursable Contract should be deemed void, unenforceable, and unlawful for the reasons expressed above and further for being against public policy and for lacking consideration in so much as it requires the FAA to provide no more than the ATC services it was already obligated to provide.

33. EAA is entitled to rescission of the Reimbursable Contract.

WHEREFORE, the FAA order demanding payment from EAA should be reversed, the Reimbursable Contract should be declared void *ab initio*, all funds paid by EAA should be returned, and EAA should be granted recovery of all fees and costs expended in this matter, together with any further relief determined to be just and proper.

Respectfully Submitted,

EXPERIMENTAL AIRCRAFT ASSOCIATION, INC.

Date: July 3, 2013

By: /s/ Alan L. Farkas
Alan L. Farkas

Alan L. Farkas
Smith Amundsen Aerospace
150 North Michigan Avenue, Suite 3300
Chicago, Illinois 606001
(312) 894- 3200
(312) 894-3210, fax
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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2013, I filed the foregoing Petition for Review and Other Relief of Petitioners, Experimental Aircraft Association, Inc. with the Clerk of the Court for the Seventh Circuit and, pursuant to Circuit Rule 15(c) and Circuit Rule 3(d), I certify that I have served one copy on each party admitted to participate in the agency proceedings as listed below.

/s/ Alan L. Farkas

Alan L. Farkas
Michael S. McGrory
SmithAmundsen, LLC
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Suite 3300
Chicago, IL 60601
312-894-3200
312-894-3210, fax

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(202) 267-3227 FAX

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**EXPERIMENTAL AIRCRAFT ASSOCIATION, INC.
OSHKOSH, WISCONSIN**

WHEREAS, the Federal Aviation Administration (FAA) believes that it can furnish, directly or by contract, material, supplies, equipment, and services which the Experimental Aircraft Association, Inc. (EAA) (Sponsor) requires, has funds available for, and has determined should be obtained from the FAA;

WHEREAS, the FAA has 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 FAA believes that 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.

ARTICLE 3. Scope

A. The purpose of this Agreement between the FAA and the Sponsor is to allow the EAA to obtain air traffic control services from the FAA. EAA will be hosting the 2013 EAA AirVenture in Oshkosh, Wisconsin. The FAA will provide air traffic

services and required support as necessary from July 23, 2013 to August 6, 2013 to include travel, setup and take down before and after the actual event dates from July 29, 2013 to August 4, 2013. This agreement provides funding for the FAA to establish these services. With this in mind, this project is titled:

“Provide Air Traffic Support for the 2013 EAA AirVenture, Oshkosh, Wisconsin”

- B. The FAA will perform the following activities to support the 2013 EAA AirVenture for the following dates: July 23, 2013 to August 6, 2013;
1. Provide air traffic control services;
 2. Provide technical operational support;
- C. The Sponsor will perform the following activities:
1. Reimburse the FAA for the personnel transportation, per-diem, lodging, actual overtime, and supplies to test, staff, and support the 2013 EAA AirVenture, in accordance with the terms of this Agreement.

ARTICLE 4. Points of Contact

A. FAA:

1. The FAA Central Service Area will perform the scope of work included in this Agreement. Peter Basso is the Director of Financial Operations and liaison with the Sponsor and can be reached at (202) 267-8242. This 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.
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:

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

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 determine funding responsibility.

ARTICLE 6. Estimated Costs

The estimated FAA costs associated with this Agreement are as follows:

COST ESTIMATE - OSHKOSH, WI - EAA AIRVENTURE	
Travel	\$340, 104.00
Overtime	\$90, 000.00
Supplies	\$17,820.00
GRAND TOTAL	\$447, 924.00

ARTICLE 7. Period of Agreement and Effective Date

This Agreement supersedes and nullifies any previous agreements between the parties on the subject matter. The effective date of this Agreement is the date of the last signature. This Agreement is considered complete when the final invoice is provided to the Sponsor and a refund is sent or payment is received as provided for in Article 8, Section E of this Agreement. Under no circumstances will this Agreement extend five years beyond its effective date.

ARTICLE 8. Reimbursement and Accounting Arrangements

- A. The Sponsor will prepay the estimated cost of the Agreement in two installments. The total cost of this agreement will not exceed \$447,924.00. The first installment will be due in advance in the amount of \$223,962.00, and the second installment of \$223,962.00 will be due 30 days after the completion of the event. The Sponsor will send a copy of the executed Agreement and the first installment payment of \$223,962.00 to the Accounting Division listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. Such advance

payment by the Sponsor must be received before the FAA incurs any obligation to implement this Agreement.

- B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.
- C. The Accounting Division is identified by the FAA as the billing office for this Agreement. The Sponsor will send a copy of the executed Agreement and the first installment payment to the Accounting Division shown below. The sponsor will submit the second installment within 30 days of the completion of the event to the Accounting Division shown below. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

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 project costs incurred as:

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

- D. The FAA will provide a Statement of Account of costs incurred against the advance payment.
- E. The cost estimates contained in Article 6 are not to exceed \$447,924. If during the course of this Agreement actual costs are lower than the estimated costs, the FAA will notify the Sponsor immediately. If this Agreement is modified in accordance with Article 9, the Sponsor agrees to prepay the entire estimated cost of the

modification, subject to the conditions of this Agreement. The Sponsor will send a copy of the executed modification to the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment. Work identified in the modification cannot start until receipt of the additional advance payment. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, the Sponsor agrees to reimburse the FAA for the additional costs incurred, whether or not a final bill or a refund has been sent.

- F. Upon completion of the FAA's services hereunder, the FAA will submit to Sponsor its final invoice showing in detail the costs actually incurred in accordance with this Agreement. If the Sponsor prepaid more than the actual costs incurred by the FAA, then the FAA will promptly reimburse the Sponsor for the overcharges.
- G. The Sponsor agrees to furnish two (2) golf carts 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 2013 EAA AirVenture for the period beginning July 23, 2013 through August 6, 2013.

ARTICLE 9. Changes and Modifications

Changes and/or modifications to this Agreement will be formalized by a written modification that will outline in detail the exact nature of the change. Any modification to this Agreement will be executed in writing and signed by the authorized representative of each party. The parties 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. Any party to this Agreement may request that it be modified, whereupon the parties will consult to consider such modifications.

ARTICLE 10. Legal Authority

It is the FAA's position that this Agreement is entered into under the authority of 49 U.S.C. § 106(l)(6), which the FAA believes 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. Disputes

Where possible, disputes pertaining to interpretation of the terms of this Agreement (other than this Article 11) will be resolved by informal discussion between the parties.

If informal negotiations fail, the Administrator will issue an order that is final unless appealed under 49 U.S.C. 46110.

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 causes of action, suits or claims arising out of the work performed under this Agreement. However, to the extent that such 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 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 the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect 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.

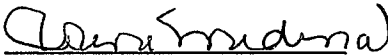
ARTICLE 17. Entire Agreement

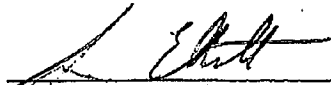
This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency.

AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

**EXPERIMENTAL AIRCRAFT
ASSOCIATION, INC.**

SIGNATURE 
NAME Irene Medina
TITLE Contracting Officer
DATE 6/12/13

SIGNATURE 
NAME Sean Elliott
TITLE VP-Advocacy & Safety
DATE 6-11-13



June 12, 2013

Federal Aviation Administration
Attn: Irene Medina, AAQ-520
2300 East Devon Avenue
Des Plaines, IL 60018

Re: Reimbursable Agreement Number AJT-OA-CSA-13-C140,
Provide Air Traffic Support for the 2013 EAA AirVenture, Oshkosh, Wisconsin

Dear Ms Medina:

Attached hereto are three signed counterparts of the Non-Federal Reimbursable Agreement (the "Agreement") between the U.S. Department of Transportation, Federal Aviation Administration ("FAA") and Experimental Aircraft Association, Inc. ("EAA"). EAA has initiated payment to the FAA by wire transfer in the amount of Two Hundred Twenty-Three Thousand Nine Hundred Sixty-two Dollars (\$223,962.00), as required under Article 8.A of the Agreement.

We understand that you will promptly return a fully-executed counterpart of the Agreement to us by courier.

EAA delivers the Agreement and payment under protest. Further, EAA has objected to and resisted the FAA decision to seek additional payment for Air Traffic Control ("ATC") services at every possible occasion. Aside from the discussions between our executives and your agency on this subject, where our objections have been clearly stated, we attempted to insert our objections into the Agreement and to explicitly reserve our rights to challenge the Agreement in a court of law; however, our modifications were firmly rejected and we were compelled to execute the Agreement in its present form.

On May 8, 2013, EAA was emphatically and finally advised by the FAA's Chief Operating Officer – Air Traffic Organization, J. David Grizzle, that the FAA would not provide Air Traffic Controllers for EAA AirVenture without this Agreement and the accompanying payment. EAA could not survive in anything like its present form if that were to happen.

AirVenture has been EAA's annual convention since its founding in 1953, and currently attracts more than 500,000 visitors and approximately 10,000 aircraft each year. FAA has provided Air Traffic Controllers for AirVenture, without additional compensation from EAA, at least since AirVenture moved to Oshkosh, WI, in 1976.

After a thorough investigation, EAA has determined that there is no viable alternative source of Air Traffic Controllers this close to AirVenture, which starts on July 29, 2013 and runs through August 4, 2013. AirVenture could not be held safely without a full complement of Air Traffic Controllers, because during the event and the arrival and departure periods our local airport, Wittman Regional Airport, is

the world's busiest airport. It would be an irresponsible and unacceptable risk to attempt to hold AirVenture without full appropriate Air Traffic Controller support. FAA is the sole available source for Air Traffic Controllers, and has threatened to withhold the supply if EAA does not accept the Agreement and pay the amounts demanded.

AirVenture provides approximately 49% of EAA's annual gross revenue. EAA has contracted with more than 700 Exhibitors, more than 60 Sponsors and 15 food and beverage concessionaires, and numerous other contractors and vendors, for AirVenture 2013 goods, services and support. We have sold approximately \$550,000 of advance admission tickets. The financial impact of dealing with all of these parties because of broken contracts would be ruinous to EAA, and would shatter our credibility and relationship with all of these vital constituent parties, making it virtually impossible to continue the event in future years.

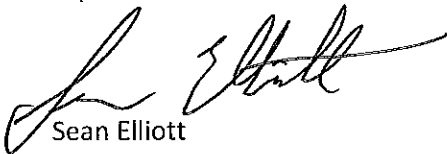
In addition, AirVenture is the core event of EAA's year and is of critical importance to our membership and to the general aviation community. It is central to our community of 176,000 members, many thousands of whom attend the event annually, travelling from all 50 states and approximately 71 foreign countries. Cancelling the event would take the heart out of EAA's relationship with our most active members, and could be fatal to the organization.

AirVenture is also an essential forum and marketing event for the entire general aviation manufacturing and services industry, one which participants in the industry believe they cannot afford to miss. Cancelling AirVenture would deal a serious blow to this industry, which annually accounts for more than \$8 Billion in sales, including more than \$3.8 Billion in exports. It would also remove an estimated \$110 Million in directly related revenue from the local economy.

The cost of the Agreement, \$447,924, is extremely burdensome to EAA and, of course, was completely unexpected and unbudgeted. It represents approximately one-third of EAA's anticipated annual surplus. We understand that FAA's intention is to increase this fee by double or more for 2014 and subsequent years, which obviously would greatly increase the damage. EAA is a non-profit 501(c)(3) organization, and payment of these fees is simply untenable. If we are unable to obtain relief from these FAA fees, EAA will be forced to re-examine the programs that have been so valuable to the aviation community, and likely increase dues and ticket prices, all of which very well could lead to a significant decline in membership and participation, and truly jeopardize our ability to survive.

Sincerely,

Experimental Aircraft Association, Inc.

A handwritten signature in black ink, appearing to read "Sean Elliott", written in a cursive style.

Sean Elliott
Vice President, Advocacy & Safety