

2 **RESOLUTION: Authorize Agricultural Permit between Experimental Aircraft Association**
3 **and Winnebago County**

6 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

7 **WHEREAS**, Experimental Aircraft Association, Inc. was the highest bidder for a three-year permit to conduct
8 agricultural cultivation at Wittman Regional Airport; and

9 **WHEREAS**, the permit allows for agricultural cultivation on 81 acres of the southern portion of Wittman
10 Regional Airport; and

11 **WHEREAS**, corn is not allowed to be grown in the approach path of the runway, which includes the
12 "restricted" parcels just south of Runway 36; and

13 **WHEREAS**, the Experimental Aircraft Association agrees to pay \$301/acre for each of the three years; and

14 **WHEREAS**, the Aviation Committee has reviewed the attached Agricultural Permit and believes that its
15 execution would be in the best interest of the citizens of Winnebago County.

16 **NOW, THEREFORE, BE IT RESOLVED** by the Winnebago County Board of Supervisors that it hereby
17 approves execution by the Winnebago County Executive and Winnebago County Clerk of the attached Airport
18 Agricultural Permit between Experimental Aircraft Association, Inc. and Winnebago County.
19

20
21 **Fiscal Note:** No budget transfer needed.
22 Will produce revenue of approximately \$24,381 each year 2022 – 2024. This amount is included
23 in expected revenue in the 2022 approved budget.
24

25 Respectfully submitted by:
26 **AVIATION COMMITTEE**

27 Committee Vote: **5-0**

28 Respectfully submitted by:
29 **PERSONNEL AND FINANCE COMMITTEE**

30 Committee Vote: **5-0**

34 Vote Required for Passage: **Majority of Those Present**

36 Approved by the Winnebago County Executive this ____ day of _____, 2022.

38 _____
39 Jonathan D. Doemel
40 Winnebago County Executive

AIRPORT AGRICULTURAL PERMIT

WITTMAN REGIONAL AIRPORT

WINNEBAGO COUNTY, WISCONSIN

THIS PERMIT, made and entered into this 1st day of December, 2021 is hereby granted to the Experimental Aircraft Association, Inc. of 3000 Poberezny Rd Oshkosh, WI 54902 hereinafter called the "Permittee", by Wittman Regional Airport, Winnebago County, Wisconsin, hereinafter called the "Owner", to occupy and utilize for agricultural purposes the following described properties, under the jurisdiction of the Owner:

Approximately Forty-Three (43) acres in unrestricted agricultural use, (permitted crops include soybeans, alfalfa, hay, and corn) and Thirty-Eight (38) acres in restricted agricultural use (low-growing crops only, excludes corn) at an annual rental rate of Three Hundred and One Dollars (\$301) per acre for the term of the permit. The parcels A, B, C, D and E are illustrated, outlined on Exhibit "A", made a part hereto by reference. Total annual rent for the term shall be Twenty-Four Thousand Three Hundred and Eighty-One Dollars (\$24,381).

THIS PERMIT is granted subject to the following terms and conditions;

1. This permit will be effective for a term of three (3)

years beginning January 1, 2022 and ending December 31, 2024.

2. The use of the above-described by Permittee shall be limited solely to agricultural purposes, and no structures of any kind except those expressly permitted by Owner shall be erected or placed thereon. No animals shall be permitted on the permit premises. Permittee may prepare the premises including any appropriate grading and filling for proper drainage, and to plant and harvest crops. Such grading and filling improvements must be approved by Owner, in writing, prior to the commencement of those improvements and the cost of those improvements shall be borne solely by the Permittee.

Notwithstanding anything to the contrary contained herein, Permittee has identified that due to a number of low areas and soft ground, Permittee desires to install approximately 14,400 square feet of Perfo-Matting in Parcels B and C in or around May 2022 for the purpose of taxiing aircraft into and over Parcels B and C and Owner hereby approves of the installation of that improvement. Within one hundred twenty (120) days after the termination of this permit with no renewal, extension or subsequent agreement for the premises being entered into by the parties, Permittee shall remove the Perfo-Matting and restore Parcels B and C to the condition they were in prior to Permittee's installation of the Perfo-Matting.

3. The Owner, and any of its employees, agents, and

assignees, shall not be responsible or liable for any damage from any cause whatsoever to any property of the Permittee located upon the above-described premises. The Permittee agrees to indemnify and to hold the Owner free and harmless from loss from each and every claim and demand whatever the nature, made on behalf of or by any person or persons, or any wrongful, careless, or negligent act or omission on the part of the Permittee, its agents, servants, and employees from all loss and damage by reason of such acts or omissions.

4. Permittee, for the occupancy and use of the above-described premises shall pay to the Owner a rental fee under this permit. Invoices for said rental fees shall be submitted to Permittee after January 1, 2022. Payments are due and payable not later than thirty (30) days after the receipt of invoice by Permittee, provided however, that in the event this permit is revoked by the Owner before the expiration of the permit, Permittee shall be entitled to a refund calculated at a daily rate basis of one three hundred sixty-fifths ($1/365^{\text{th}}$) of the annual rental for the deficiency of time resulting from such revocation.

5. Permittee, their employees and sub-contractors, shall remain clear of all airport movement areas at all times.

6. No agricultural operations will be permitted on the airport between July 15th and August 5th each year, also known

as the farming blackout period. All airport areas whose crop is hay (or alfalfa) shall be cut and removed between July 1st and July 14th of each year. Hay fields may be used for EAA AirVenture operations during the farming blackout period.

7. Storage of farming materials such as manure shall not be permitted on Airport property.

8. Permittee shall provide at its own cost and expense and provide County with Certificate of Insurance indicating proof of the following insurance from companies licensed in the State at the specified limits:

(1) **Commercial General Liability Insurance - (non-aircraft)** with a minimum limit of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include on the Certificate of Insurance the following coverages:

- (a) Premises - Operations
- (b) Products and Completed Operations
- (c) Broad Form Property Damage
- (d) Broad Form Blanket Contractual
- (e) Personal Injury
- (f) Errors and Omissions; if applicable

(2) **Automobile Liability** insurance with a minimum limit of \$1,000,000 Combined Single Limit for

Bodily Injury and Property Damage Liability.

The insurance shall include Bodily Injury and Property Damage for the following coverages:

- (a) Owned Automobiles
- (b) Hired Automobiles
- (c) Non-Owned Automobiles

Such insurance shall include Winnebago County as an additional insured.

Such insurance shall include a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to the Winnebago County Insurance Coordinator, c/o 112 Otter Ave., P.O. Box 2808, Oshkosh, WI 54903-2808.

All such notices will name the Permittee and identify the contract. Permittee shall provide a certificate of insurance coverage to the Owner prior to the occupancy and use of any premises of Owner. Permittee agrees to maintain current insurance status, and provide renewed certificates of insurance annually on or before the effective date of the renewal of this permit.

9. **Hold Harmless:** At all times during the term of this Permit, the Permittee agrees to indemnify, save harmless, and defend the Owner, its boards, commissions, agencies, officers,

employees, and representatives against any and all liability, losses, damages, costs, or expenses, whether personal injury or property damage, that the Owner, its officers, employees, agencies, boards, commissions, and representatives may sustain, incur, or be required to pay by reason of the Permittee furnishing the services or goods required to be provided under this permit, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the Owner, its agencies, boards, commissions, officers, employees, or representatives.

10. This Permit shall be subordinate to the provisions of any existing or future agreement between the Owner and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

11. Whereas, it is possible that Owner may complete certain airport improvements during the term of this permit, which may necessitate the destruction of certain of Permittee's work in process. Owner agrees to reimburse Permittee for any such loss of the appraised value at fair market value of the crop planted, the value of which to be determined by a crop insurance adjuster agreed to by both parties.

12. The Permittee shall abide by any and all rules and regulations of the town, city, county, state and federal authorities respecting the safety measures to be taken and observed in the use of said premises. Permittee shall be subject to such written rules and regulations as the Winnebago County Board of Supervisors or its Aviation Committee may adopt. Such rules and regulations shall not, however, be in conflict with the terms of this permit where possible. Permittee agrees to exercise appropriate care and caution in the use of any chemical or hazardous material in the conduct of its operation on the airport premises, and agrees to notify Owner in the event any incident or event takes place that may cause damage to the environment or should be of a reportable nature that damage to the environment or surrounding water supplies could result. Permittee understands and agrees that it will be responsible for any such events or incidents that may cause the Owner to be cited for such incidents or events that may be in violation of state or federal environmental rules or regulations.

13. **Compliance with Civil Rights Act of 1964.** The Permittee, in the use of the permitted premises for himself, his personal representatives, successors in interest, and assigns, as part of the consideration thereof, does hereby covenant and agree as a covenant running with the premises that (1) no person on the grounds of race, color or national origin shall be

excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (3) that in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the premises shall be used in compliance with all other requirements imposed by, or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Permittee shall have the right and privilege to engage in, and conduct all business operations authorized under the terms of this permit, provided, however, that this permit shall not be construed in any manner to grant the Permittee, or those claiming under him the exclusive right to use the premises or facilities of the aforementioned airport other than those premises permitted exclusively to the Permittee hereunder.

14. **WISCONSIN LAW CONTROLLING:** It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law

shall be controlling.

15. **ARBITRATION:**

A. This Permit shall be covered by the laws of the State of Wisconsin.

B. Claims, disputes, and other matters in question between the parties to this Permit arising out of, or relating to, this Permit or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties of this Permit. In the event the parties proceed to arbitration, the proceedings shall be governed by the following:

1. The American Arbitration Association shall submit a panel of five (5) arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.

2. The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.

- 3) Any arbitration shall take place in the city of Oshkosh, Winnebago County, Wisconsin.
- 4) Unless otherwise agreed upon by the parties, the arbitration hearing shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
- 5) Any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, relating to the discovery procedure including, but not limited to, witness, reporter's fees for depositions, photocopying fees, postage fees, and delivery fees.
- 6) In issuing any ruling regarding any arbitration matter, the arbitrator shall issue a written decision which shall include written findings of fact and conclusions of law.
- 7) The proceeding and arbitration shall be governed by the law of the State of Wisconsin including, specifically, Chapter 788, Wis. Stats.

16. **COMPLIANCE WITH WISCONSIN PUBLIC RECORDS LAW:**

Permittee understands that Owner, as a county, is bound by the Wisconsin Public Records Law, Wis. Stat. sec. 19.21, et. seq.

Pursuant to Wis. Stat. sec. 19.36 (3), Owner may be obligated to produce to a third party the records that are "produced or collected" by Permittee as a party to which Owner has entered into this permit with ("Records"). Permittee is further directed to Wis. Stat. sec. 19.21, et. seq. for the statutory definition of Records subject to disclosure under this section, and Permittee acknowledges that it has read and understands that definition. Notwithstanding any other term of this permit, Permittee is (1) obligated to retain Records for seven (7) years from the date of the Record's creation; and (2) produce such Records to Owner if, in Owner's determination, Owner is required to produce the records to a third party in response to a public records request. Permittee's failure to retain and produce Records as required by this section shall constitute a material breach of this permit, and Permittee must defend and hold Owner harmless from liability due such breach.

17. **NON-ASSIGNMENT**: Permittee shall not at any time assign any part of this permit, nor assign any of the permitted premises, nor sublease the premises, without consent of the Owner, which shall not be unreasonably withheld.

18. **SEVERABILITY**: In the event that any provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision contained herein, provided that

the validity of any such provisions does not materially prejudice either the Owner or the Permittee in their respective rights and obligations contained in the valid provisions of this permit.

19. **ENTIRE AGREEMENT:** The entire agreement of the parties is contained herein, and this permit supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

Signatures Follow on Next Page


IN WITNESS HEREOF, the parties have hereto set their hands and seals on the day first above written.

WINNEBAGO COUNTY (OWNER)

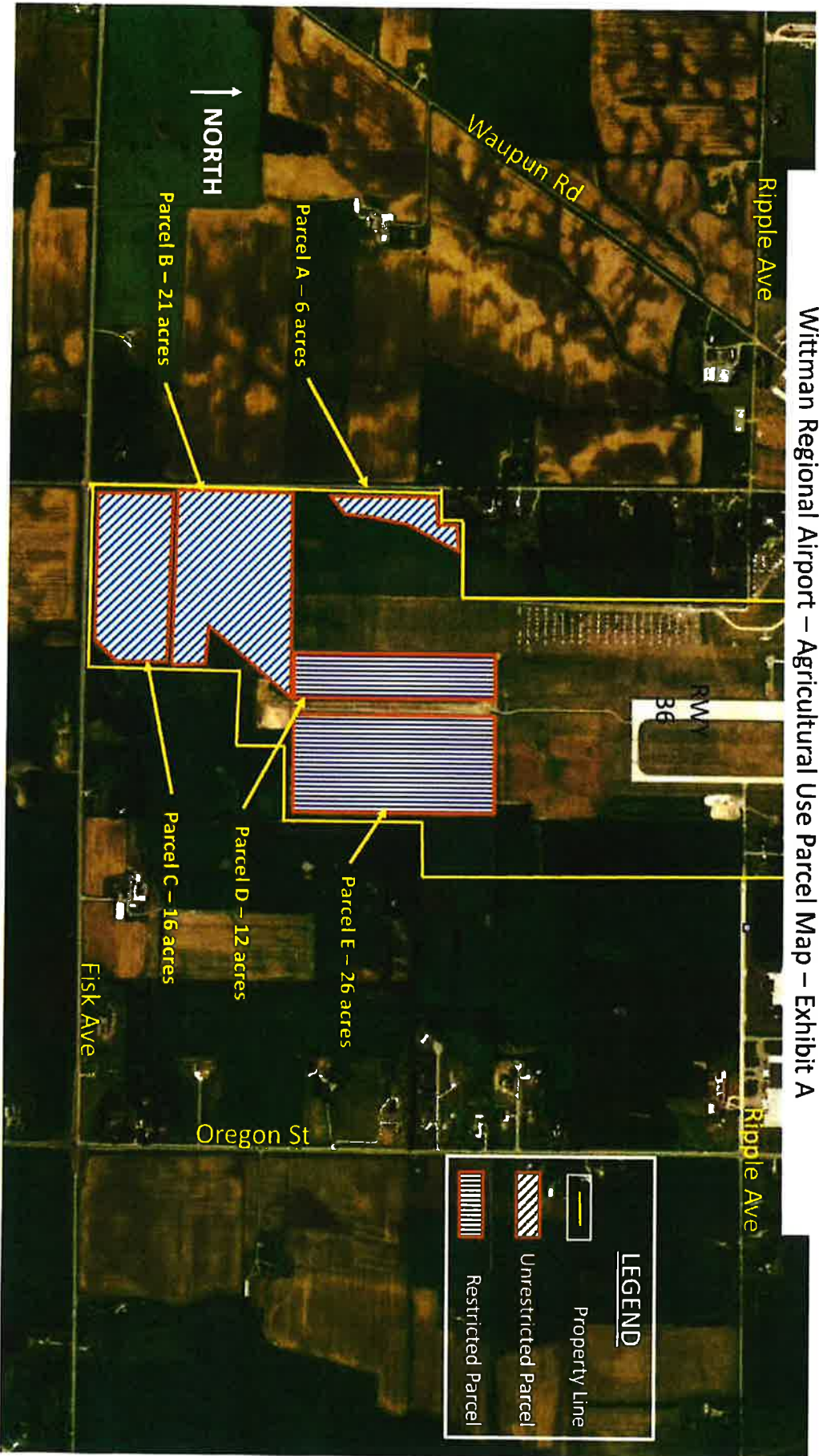
By: _____ Dated: _____
Jon Doemel
County Executive

By: _____ Dated: _____
Sue Ertmer
County Clerk

EXPERIMENTAL AIRCRAFT ASSOCIATION, INC. (PERMITTEE)

By:  _____ Dated: 01-11-22
Sean Elliott
VP, Advocacy & Safety

Wittman Regional Airport – Agricultural Use Parcel Map – Exhibit A



DATE: FEBRUARY 22, 2022

TO: WINNEBAGO COUNTY BOARD OF SUPERVISORS

FROM: JIM SCHELL, AIRPORT DIRECTOR

RE: EXPERIMENTAL AIRCRAFT ASSOCIATION AGRICULTURAL PERMIT

Background:

In the Fall of 2021, an RFP was issued to solicit bids for an airport agricultural permit. The Experimental Aircraft Association was the highest bidder for use of airport agricultural land parcels A, B, C, D and E. The area contains approximately 81 acres. EAA bid \$301/acre/year, or \$24,381 annually. The term of the agreement is January 1, 2022 through December 31, 2024 (3-year).

Policy Discussion:

EAA was the previous permit holder for parcels A, B, C, D, and E during 2018-2021 at a rate of \$175/acre.

The permit has been signed on behalf of EAA, but not yet signed on behalf of the County, pending board approval.

Requested Action:

Approve the Airport Agricultural Permit between Experimental Aircraft Association and Winnebago County.

Committee Action:

At the December 1, 2021 Aviation Committee meeting, Supv. Lautenschlager moved to recommend the approval of this agreement, seconded by Supv. Konezke. Motion carried 5/0.

Attachments:

3-Year Agricultural Permit

Exhibit A – Agricultural Land Map