
FINAL AGREEMENT

CONCERNING FLYING CLOUD AIRPORT

AND MAC ORDINANCE No. 51

BETWEEN

THE CITY OF EDEN PRAIRIE, MINNESOTA

AND

THE METROPOLITAN AIRPORTS COMMISSION

December 2002

TABLE OF CONTENTS

Recitals	1
Agreement	2
Article 1: Definitions	2
Article 2: Conditions Precedent	4
2.1 Conditions Precedent	4
Article 3: MAC Commitments and Presentations	4
3.1 Amended Ordinance No. 51	4
3.2 Runway Length	4
3.3 Pavement Strength	4
3.4 Part 139 Certification	4
3.5 Voluntary Restraint on Nighttime Aircraft Operations And Recommended Procedures for Early Morning Departures	5
3.6 Limits on Operations of Stage 2 Aircraft	5
3.7 Noise Reduction Testing and Sound Insulation	6
3.8 Cargo Operations	6
3.9 Nonexclusive Nature of Commitments and Representations	6
3.10 Implementation and Enforcement	6
3.10.1 Airport Operating Rules and Regulations	6
3.10.2 Letters of Intent	7
3.10.3 Notice to Fixed Base Operators and Airport Users	7
3.10.4 Pilot Education Program	7
3.10.5 Award Program for Voluntary Compliance	7
3.10.6 Complaints and Investigation	8
3.10.7 Enforcement	8
3.10.8 Monitoring Compliance	8
3.10.9 Notice of Operation Inconsistent with Voluntary Measure	8
3.10.10 Eden Prairie Involvement	8

Article 4: Eden Prairie Commitments and Representations	9
4.1 Eden Prairie Support for MAC Commitments and Representations	9
4.2 Eden Prairie Support for Proposed Airport Expansion	9
4.3 Eden Prairie Commitments on Land Use Compatibility	10
Article 5: Third Party Challenges	10
5.1 Duty to Defend	10
5.2 MAC's Authority to Defer Enforcement or Implementation of Commitment	11
5.3 Duties in Response to an Adverse Judicial or Administrative Decision	11
5.4 Duties in Response to an Adverse Judicial or Administrative Decision on Stage 2 Ban	12
Article 6: Dispute Resolution	12
6.1 Notice of Default	12
6.2 Right to Cure Default	13
6.3 Informal Dispute Resolution	13
6.4 Formal Mediation	13
6.5 Costs of Alternative Dispute Resolution	13
6.6 Dispute Resolution Process Mandatory	13
6.7 Confidentiality	13
6.8 Waiver of Rights	13
Article 7: Remedies	14
7.1 General Remedies: Specific Performance and Injunctive Relief	14
7.2 Specific Remedies	14
7.21 Eden Prairie Commitments Concerning Proposed Airport Expansion	14
7.22 MAC Commitments and Representations	14
Article 8: General Provisions	14
8.1 Duration	14

8.2	Amendment	14
8.3	Headings	15
8.4	Notices	15
8.5	Exhibits	16
8.6	Counterparts	16
8.7	Governing Law	16
8.8	Severability	16
8.9	No Third-Party Beneficiary	16
8.10	Successors and Assigns	16
8.11	Complete Agreement	16
8.12	Change in Law	16
	Exhibits List	20

**FINAL AGREEMENT
CONCERNING FLYING CLOUD AIRPORT
AND ORDINANCE NO. 51**

This Final Agreement Concerning Flying Cloud Airport and Ordinance No. 51 ("this Agreement") is made this ___ day of _____, 2002, between the CITY OF EDEN PRAIRIE, MINNESOTA ("Eden Prairie"), a statutory city acting pursuant to the authority of Resolution No. ___, passed _____, 2002, and the METROPOLITAN AIRPORTS COMMISSION ("MAC"), a public corporation of the State of Minnesota.

RECITALS

WHEREAS, MAC owns and operates Minneapolis-St. Paul International Airport, one intermediate airport, and five minor airports, including Flying Cloud Airport; and

WHEREAS, Flying Cloud Airport is located entirely within the geographic and jurisdictional boundaries of the City of Eden Prairie; and

WHEREAS, on January 16, 1978, MAC adopted Ordinance No. 51, which prohibits the operation of jet aircraft at Flying Cloud Airport except jet aircraft with a maximum takeoff weight of 20,000 pounds or less; and

WHEREAS, by correspondence dated September 27, 2000, October 13, 2000, and January 30, 2001, the Federal Aviation Administration stated that it believed that Ordinance No. 51 was inconsistent with Federal law and MAC's contractual obligations to the Federal government and that MAC accordingly should develop a plan to amend or repeal Ordinance No. 51; and

WHEREAS, MAC has proposed to expand Flying Cloud Airport for the purpose of diverting more general aviation traffic to the Airport by, among other improvements, extending the length of the two parallel runways and developing property for new hangar construction; and

WHEREAS, in October 1992, MAC adopted a Long-Term Comprehensive Plan, approved by the Metropolitan Council in April 1996, calling for expansion of Flying Cloud Airport to meet forecast aviation demand in the metropolitan area; and

WHEREAS, by public statements and other actions, including the adoption of Resolution No. 88-299 and Resolution No. 92-124, Eden Prairie has opposed the expansion of Flying Cloud Airport because of the noise and other environmental consequences projected to result from such expansion; and

WHEREAS, MAC finds that the elements of this Agreement will reduce the noise exposure that otherwise would be associated with the proposed expansion of Flying Cloud Airport; and

WHEREAS, Minnesota Statutes Section 473.641 subdivision 4 prohibits MAC from extending the runway length at minor airports beyond 5,000 feet without prior legislative authorization; and

WHEREAS, two members of the Eden Prairie City Council and two members of the MAC Commission signed a Memorandum of Understanding on December 4, 2001, which was endorsed by the MAC Planning and Environmental Committee and the Eden Prairie City Council on December 4, 2001 and by the MAC Commission on December 17, 2001; and

WHEREAS, MAC and Eden Prairie presented the Memorandum of Understanding to officials of the Federal Aviation Administration; and

WHEREAS, the Memorandum of Understanding recommended that MAC and Eden Prairie draft and execute a final agreement consistent with the terms of the Memorandum of Understanding and the FAA's comments on the Memorandum of Understanding.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, Eden Prairie and MAC hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

As used in this Agreement, the words and phrases defined below have the following meanings:

- 1.1 **Agreement** means this Final Agreement Concerning Flying Cloud Airport and Ordinance No. 51 and all exhibits and attachments hereto.
- 1.2 **Airport** means Flying Cloud Airport, Eden Prairie, Minnesota.
- 1.3 **Airport User** means the owner or operator of an aircraft who conducts a take off, landing, or other aircraft operation of any kind, including maintenance and repair, at the Airport during the effective period of this Agreement.
- 1.4 **Amended Ordinance No. 51** means the ordinance attached hereto as Exhibit 1 which is intended to replace Ordinance No. 51 and provide mandatory limits on the operation of aircraft to, from, and at the Airport.
- 1.5 **Designated Representative of Eden Prairie** means the City Manager of the City of Eden Prairie or the individual appointed by the City Manager, as communicated to MAC in writing, to act as the designated representative.
- 1.6 **Eden Prairie** means the municipal corporation of Eden Prairie, Minnesota.

- 1.7 **FAA** means the Federal Aviation Administration, United States Department of Transportation, or any successor agency or department.
- 1.8 **Final FAA Decision** means a decision of the FAA subject to judicial review pursuant to 49 U.S.C. §46110 and/or 5 U.S.C. §§ 701 – 706, as each may be amended, or any successor law or judicial decision relating to judicial review of FAA decisions.
- 1.9 **Fixed Base Operator** means an individual or company providing commercial aeronautical services at the Airport such as one or more of the following: aircraft maintenance and repair, fueling, aircraft storage, aircraft sales, and flight instructions.
- 1.10 **MAC** means the Metropolitan Airports Commission, authorized by L.1943, c.500.
- 1.11 **MOU** means the Memorandum of Understanding Concerning Flying Cloud Airport and Ordinance No. 51 executed on December 4, 2001, by two members of the Eden Prairie City Council and two members of the Metropolitan Airports Commission and endorsed by the Eden Prairie City Council and the MAC Commission.
- 1.12 **Major Air Cargo Operations** means the operation of a business engaged principally in the transportation of cargo, whose operations at Flying Cloud Airport would involve the operation of aircraft weighing more than 60,000 pounds and/or whose facilities at the Airport would exceed 80,000 square feet in size.
- 1.13 **Nighttime Aircraft Operation** means any takeoff or landing of an aircraft at Flying Cloud Airport between the hours of 10:00 p.m. local time and 6:00 a.m. local time.
- 1.14 **Nighttime Currency Requirements** means the nighttime training requirements of 14 C.F.R. Part 91, as the same may be amended from time to time.
- 1.15 **Ordinance No. 51** means the ordinance adopted by MAC on January 16, 1978 concerning the operation of jet aircraft at Flying Cloud Airport.
- 1.16 **Part 139 Certification** means an airport operating certificate issued by the FAA pursuant to 14 C.F.R. Part 139, authorizing an airport operator to accept scheduled and unscheduled passenger operations of an air carrier. For purposes of this Agreement, 14 C.F.R. Part 139 includes the regulation in effect as of the date of this Agreement and amendments to Part 139 that are consistent with amendments proposed by the FAA at 65 Fed. Reg. 38,636 (2000), but does not otherwise include future amendments to the regulation or any successor regulation.
- 1.17 **Passenger Facility Charge** means the passenger facility charge described in 49 U.S.C. § 40117, as the same may be amended from time to time.
- 1.18 **Proposed Airport Expansion** means capital improvements at the Airport proposed by MAC, described and depicted as Alternative F in the Supplement to the Draft Environmental Impact Statement, Expansion of Flying Cloud Airport

(August 2001), attached as Exhibit 2 (without appendices), including, but not limited to, extension of the two parallel runways, development of property for new hangar construction, acquisition of additional property, and any minor changes in the proposed capital improvements.

- 1.19 **Runway Weight Bearing Capacity** means the weight-bearing capacity of the Airport runways as determined by an engineering study and is: maximum gross takeoff weight 60,000 pounds, dual wheel.
- 1.20 **Stage 2 Aircraft** means an aircraft that has been certificated as meeting the Stage 2 noise levels prescribed in FAR pt. 36, App. C, § C36.5 and that does not meet the Stage 3 noise levels prescribed therein.

ARTICLE 2

CONDITIONS PRECEDENT

- 2.1 **Conditions Precedent.** This Agreement shall not be effective unless and until the following occurs:
 - 2.1.1 MAC adopts an ordinance substantially the same as Exhibit 1 (“Amended Ordinance No. 51”).
 - 2.1.2 Eden Prairie adopts a resolution substantially the same as Exhibit 3, repealing Resolution No. 88-299 and Resolution No. 92-124.
 - 2.1.3 Eden Prairie amends the City of Eden Prairie Comprehensive Guide Plan to include a chapter on the Airport substantially the same as Exhibit 4.

ARTICLE 3

MAC COMMITMENTS AND REPRESENTATIONS

- 3.1 **Amended Ordinance No. 51.** MAC shall implement and enforce Amended Ordinance No. 51 on and after the effective date identified therein.
- 3.2 **Runway Length.** MAC shall not take any action to increase the length of the runways at the Airport in excess of the length contemplated in the Proposed Airport Expansion, unless required to do so by State law, provided that MAC will not initiate, promote, or otherwise support enactment of such law.
- 3.3 **Pavement Strength.** MAC shall not take any action to increase the Runway Pavement Weight-Bearing Capacity at the Airport, unless required to do so by State law, provided that MAC will not initiate, promote, or otherwise support enactment of such law.
- 3.4 **Part 139 Certification.** MAC shall not apply for Part 139 Certification at the Airport to provide facilities for air carrier operations.

3.5 **Voluntary Restraint on Nighttime Aircraft Operations and Recommended Procedures for Early Morning Departures.** MAC shall implement a program of voluntary restraints on Nighttime Aircraft Operations, except operations between 10:00 p.m. and 12:00 a.m. conducted to meet Nighttime Currency Requirements. Within six months of the effective date of this Agreement, MAC shall identify and evaluate specific operational procedures that would limit the noise impact of aircraft operations between 6:00 a.m. and 7:00 a.m., which procedures could include, but are not limited to, dispersion of aircraft departures, defined flight routes, or noise abatement departure procedures. Upon completion of this evaluation, MAC shall adopt those operational procedures that are mutually acceptable to MAC and Eden Prairie.

3.6 **Limits on Operations of Stage 2 Aircraft**

3.6.1 MAC shall implement a voluntary program to preclude all operations at the Airport by Stage 2 Aircraft.

3.6.2 In the event that the number of departures at the Airport by Stage 2 Aircraft exceeds seventy-five (75) in any rolling twelve-month period, MAC shall prohibit operations by all Stage 2 Aircraft from operating at the Airport; provided that Eden Prairie may, in its sole discretion, waive this requirement if Eden Prairie determines that unusual or unique circumstances caused the number of departures by Stage 2 Aircraft to exceed seventy-five.

3.6.3 Before implementing the prohibition on Stage 2 Aircraft identified in Section 3.6.2, MAC shall complete any necessary procedural steps as required under federal law, including a study required by 14 C.F.R. Part 161, as the same may be amended in the future ("Part 161 Study").

3.6.3.1 MAC shall perform the Part 161 Study in a thorough and professional manner.

3.6.3.2 MAC shall consult closely with Eden Prairie in preparing a scope of work and evaluating and selecting a consultant to perform the Part 161 Study.

3.6.3.3 MAC shall seek acknowledgement from the FAA that the Part 161 Study complies with Part 161.

3.6.3.4 MAC shall prepare a second or supplemental study in the event that the FAA criticizes the Part 161 Study as legally inadequate or otherwise not in full compliance with Part 161.

3.6.3.5 The parties recognize that the Part 161 Study, including a second or supplemental study, could cost Five Hundred Thousand Dollars (\$500,000) or more.

3.7 **Noise Attenuation Testing and Sound Insulation**

3.7.1 MAC shall test the residences shown on Exhibit 5, in accordance with a methodology agreed upon by MAC and Eden Prairie, to determine the existing exterior to interior noise reduction level. MAC shall complete testing within two years from the date that the extended runways are made available for use.

3.7.2 In the event that any residence shown on Exhibit 5 has an exterior to interior noise attenuation of less than 20 dBA, MAC shall provide sound insulation to achieve a noise reduction of at least 20 dBA. MAC shall consult with Eden Prairie to determine the nature and extent of sound insulation to be provided for eligible residences. MAC shall complete sound insulation of all eligible residences within two years from the date that the extended runways are made available for use.

3.7.3 MAC shall provide testing and sound insulation pursuant to this Paragraph 3.7 regardless of whether funding is provided by the federal government.

3.7.4 No new residence for which final building permits were issued on or after December 4, 2001, shall be eligible to receive testing or sound insulation pursuant to this Paragraph 3.7.

3.8 **Cargo Operations.** MAC represents that, based on the commitments and representations contained in this Article 3, Major Air Cargo Operations will not be able to use the Airport.

3.9 **Nonexclusive Nature of Commitments and Representations.** The commitments and representations contained in this Article 3 are in addition to any existing, proposed, or future measure to control aircraft and Airport noise and the environmental consequences of Airport operations and development and do not prohibit or limit in any way (1) MAC's ability or responsibility to adopt other such measures as MAC may deem necessary and appropriate or be required to adopt, or (2) Eden Prairie's ability to request that MAC adopt other such measures.

3.10 **Implementation and Enforcement**

3.10.1 **Airport Operating Rules and Regulations.** MAC shall, within six months from the effective date of this Agreement, prepare and distribute

operating rules and regulations for Flying Cloud Airport that will contain the commitments and representations consistent with this Article 3 and Amended Ordinance No. 51 that affect the actions of Airport Users and Fixed Base Operators, other operational requirements and noise abatement measures that MAC has adopted previously, and any additional operational requirements and noise abatement measures as MAC, in its sole discretion, may choose to adopt and include.

- 3.10.2 **Letters of Intent.** MAC shall use its best efforts to negotiate with Fixed Base Operators, Airport Users who base aircraft at the Airport and other Airport Users, as determined by MAC, voluntary letters of intent committing the Fixed Base Operator or Airport User to (1) adhere to the voluntary limits on aircraft operations contained in this Article 3, and (2) participate actively in implementing and monitoring compliance with Amended Ordinance No. 51 and the measures contained in this Article 3.
- 3.10.3 **Notice to Fixed Base Operators and Airport Users.** MAC shall inform current and future Airport Users and Fixed Base Operators about the commitments contained in this Article 3 and Amended Ordinance No. 51 that affect aircraft operations at the Airport by publishing and keeping current notice in the following publications: Airport Facility Directory; Department of Defense Flight Information Manual; Jeppesen Information Manual; and relevant MAC publications.
- 3.10.4 **Pilot Education Program** MAC shall implement a Pilot Education Program designed to inform Airport Users and Fixed Base Operators about the commitments contained in this Article 3 and Amended Ordinance No. 51 that affect the actions of Airport Users and Fixed Base Operators, other operational requirements and noise abatement measures that MAC has adopted previously, and any additional operational requirements and noise abatement measures as MAC, in its sole discretion, may choose to adopt and include. The Pilot Education Program may include, but will not be limited to, posting and display of information in facilities maintained by Fixed Base Operators and airfield signage. MAC will consult on at least an annual basis with the Designated Representative of Eden Prairie on the curriculum for and implementation of the Pilot Education Program.
- 3.10.5 **Award Program for Voluntary Compliance.** MAC will publicly recognize, through a certificate, award, or similar means, on an at least annual basis the actions and efforts of one or more Airport Users or Fixed Base Operators that avoid or promote avoidance of operations inconsistent with the voluntary limits contained in this Article 3.

3.10.6 **Complaints and Investigation** MAC shall thoroughly investigate all credible complaints and information received from local residents, Eden Prairie, Airport Users, Fixed Base Operators, or any other source to determine whether a violation or failure to comply with a voluntary measure has occurred and take appropriate action as dictated by the relevant provision of this Article 3 or Amended Ordinance No. 51.

3.10.7 **Enforcement**. MAC shall coordinate and cooperate with Eden Prairie in the prosecution of any violation of Amended Ordinance No. 51.

3.10.8 **Monitoring Compliance**

3.10.8.1 MAC shall instruct all MAC employees working on a temporary or permanent basis at the Airport of the commitments of this Article 3 and Amended Ordinance No. 51 and provide instructions on procedures for notifying the proper parties of a potential violation or failure to comply with a voluntary measure.

3.10.8.2 MAC shall perform, on no less than a monthly basis, a review of the ANOMS flight track database to identify any and all Stage 2 Aircraft operations occurring at the Airport since the prior review. MAC shall keep a separate record of all Stage 2 Aircraft operations and provide the Designated Representative of Eden Prairie, on a quarterly basis, with a notice identifying the date and time of each Stage 2 Aircraft operation in the quarter and a total of all Stage 2 Aircraft operations in the preceding rolling twelve months.

3.10.9 **Notice of Operation Inconsistent with Voluntary Measure**. MAC shall send a written notice to the owner or operator of any aircraft known to have operated in a manner inconsistent with the voluntary restraints on Nighttime Aircraft Operations, early morning departures(as developed and modified pursuant to Paragraph 3.5), and operations by Stage 2 Aircraft. The notice shall provide information about the inconsistent operation, state that MAC's policy is to limit voluntarily inconsistent operations, and request that the owner or operator provide a detailed response describing the reason for the inconsistent operation. MAC shall maintain a record of all such correspondence and provide copies of such correspondence to the Designated Representative of Eden Prairie.

3.10.10 **Eden Prairie Involvement**

3.10.10.1 MAC shall provide the Designated Representative of Eden Prairie with a copy of all notices to or other correspondence with

Airport Users and Fixed Base Operators concerning any identified violation or failure to comply with a voluntary measure.

3.10.10.2 MAC shall provide Eden Prairie, upon reasonable notice, access to the Airport, accompanied by a MAC employee, to inspect any facility to which MAC has access.

3.10.10.3 MAC will make presentations to the Eden Prairie City Council as requested concerning MAC's implementation and enforcement of the commitments contained in this Article 3.

ARTICLE 4

EDEN PRAIRIE COMMITMENTS AND REPRESENTATIONS

- 4.1 **Eden Prairie Support for MAC Commitments and Representations.** Eden Prairie supports MAC's adoption of Amended Ordinance No. 51 and the commitments and representations contained in Article 3.
- 4.2 **Eden Prairie Support for Proposed Airport Expansion**
- 4.2.1 Eden Prairie shall not file or serve a complaint or other pleading with any court challenging the Proposed Airport Expansion or the Environmental Impact Statement concerning the Proposed Airport Expansion.
- 4.2.2 Eden Prairie shall not file with the FAA or other governmental authority comments that state or imply that the Proposed Airport Expansion should not occur, that MAC should consider or pursue an alternative to the Proposed Airport Expansion, or, subject to Paragraph 4.2.5.1, that the Environmental Impact Statement concerning the Proposed Airport Expansion is inadequate.
- 4.2.3 Eden Prairie shall not advocate against the Proposed Airport Expansion by attempting to persuade the FAA or other governmental authority not to approve, authorize, or permit the Proposed Airport Expansion or the Environmental Impact Statement for the Proposed Airport Expansion.
- 4.2.4 Eden Prairie shall not promote, represent or in any way support any third party in opposing the Proposed Airport Expansion or the Environmental Impact Statement for the Proposed Airport Expansion, including without limitation by drafting documents for the purpose of supporting the opposition of such parties.
- 4.2.5 The following actions shall not constitute violations of Eden Prairie's commitments under this Paragraph 4.2:
- 4.2.5.1 In the interest of protecting the health, safety and welfare of members of the community, Eden Prairie may request that MAC

provide additional disclosures concerning the environmental consequences of the Proposed Airport Expansion, and Eden Prairie may promote mitigation of any environmental consequences other than mitigation measures and environmental consequences addressed in this Agreement.

4.2.5.2 Eden Prairie may disclose documents as required by the Minnesota Data Practices Act or as otherwise required by Minnesota law.

4.2.5.3 Officials and employees of Eden Prairie may take any action concerning the Proposed Airport Expansion so long as such officials and employees are not acting on behalf of Eden Prairie.

4.2.5.4 Eden Prairie may oppose or take any other action concerning capital improvement projects or other MAC actions that (1) require supplementing the Environmental Impact Statement as prescribed by FAA Order 5050.4A Section 104, as the same may be amended in the future, or (2) that are in addition to the Proposed Airport Expansion.

4.3 **Eden Prairie Commitments on Land Use Compatibility.** Eden Prairie shall notify MAC of any public hearing at which Eden Prairie will consider amending the Eden Prairie Comprehensive Guide Plan to permit development of residences on any property that is shown in the then-current Comprehensive Guide Plan as being exposed to Airport noise in excess of DNL 60 dB.

ARTICLE 5

THIRD PARTY CHALLENGES

5.1 **Duty to Defend.** If any party, including without limitation any individual, organization, corporation, association, or government agency (including the FAA), challenges or contests the legality of this Agreement, the authority of either party to enter into this Agreement, Amended Ordinance No. 51, the other commitments or representations contained in this Agreement, the Part 161 Study, or any action taken to comply with this Agreement, in any judicial, administrative, or similar forum, MAC and Eden Prairie shall, except as expressly provided in this Agreement, take the following action(s):

5.1.1 Defend vigorously this Agreement, the authority of either party to enter into this Agreement, Amended Ordinance No. 51, the other commitments or representations contained in this Agreement, the Part 161 Study, or any action taken to comply with this Agreement.

5.1.2 Oppose and defend against any attempt to prevent either party from performing any or all of the requirements contained in this Agreement.