

**MEMORANDUM OF UNDERSTANDING**  
**CONCERNING FLYING CLOUD AIRPORT AND ORDINANCE NO. 51**

This Memorandum of Understanding ("MOU") contains the recommendation of the undersigned parties regarding amendments to Ordinance No. 51 and the proposed expansion of Flying Cloud Airport as set forth in the Supplement to the Draft Environmental Impact Statement, August 2001. The undersigned parties believe that it is necessary to take the actions described in this MOU to obtain City of Eden Prairie ("Eden Prairie") acceptance of the proposed expansion and address community concerns; implement reasonable measures designed to provide meaningful noise relief and retain the character of the Airport; and provide for the aeronautical needs of the Metropolitan Airports Commission ("MAC") and Airport users.

**Ordinance No. 51.** The undersigned parties recommend that MAC amend Ordinance No. 51 in the following manner and that Eden Prairie support such amendment:

- a. **Stage 2 Aircraft.** Stage 2 aircraft will be prohibited from operating at Flying Cloud Airport. Exceptions will be made for emergencies. MAC will agree to the following to implement the Stage 2 restriction: (1) to conduct in a thorough and professional manner any study required by federal law or policy to implement the restriction, (2) to consult closely with Eden Prairie in preparing a scope of work and evaluating and selecting a consultant, (3) to seek FAA acknowledgement that the study complies with FAR Part 161, (4) if the FAA criticizes the study as legally inadequate or otherwise not in full compliance with FAR Part 161, to prepare a second or supplemental study to respond to any such criticisms, and (5) to issue a Notice to Proceed on the proposed runway extension only after MAC has completed and released the first study and to make the proposed runway extension available for use only after the time at which MAC would be authorized pursuant to FAR Part 161 Subpart C to implement the restriction; provided, however, that Eden Prairie agrees that MAC will be excused from the commitments in item (5) once MAC has expended an amount identified in the Final Agreement, described below, on the first and any required supplemental study. The undersigned parties further recommend that MAC and Eden Prairie consider alternatives to the prohibition on Stage 2 aircraft operations that would (1) fit into the "grandfathering" provisions of the Airport Noise and Capacity Act of 1990 and FAR Part 161, and (2) provide substantially the same noise effect as a complete ban on Stage 2 aircraft operations or otherwise provide substantial and meaningful noise relief in a manner mutually acceptable to MAC and Eden Prairie.
- b. **Maintenance Run-ups.** Maintenance run-ups will be prohibited between 10:00 p.m. and 7:00 a.m. unless the inability to perform a maintenance run-up during this time period would materially affect the planned departure time of the aircraft on which the maintenance is being performed. MAC will require the submission of documentation of maintenance run-ups occurring during this time period by the person performing the run-up, setting forth the circumstances under which the run-up was required.
- c. **Runway Pavement Strength.** MAC represents that a previously performed analysis of runway pavement reveals that the maximum weight-bearing capacity of runways at the Airport allows use by aircraft with a maximum gross takeoff weight (MGTO) of 60,000 lbs. or less. MAC will take necessary actions to restrict aircraft operations to those aircraft with a certified MGTO of 60,000 lbs. or less. This restriction may be modified only upon mutual consent by MAC and Eden

Prairie, and MAC shall not take any action to increase the runway pavement weight-bearing capacity, unless required to do so by State law, provided that MAC will agree not to initiate, promote, or otherwise support enactment of such law.

- d. Enforcement of Restrictions. A schedule of sanctions will be created as part of the Ordinance delineating the progressive penalties to be assessed for Ordinance violations.
2. Part 139. The undersigned parties recommend that MAC agree that it will not apply for FAR Part 139 Certification at Flying Cloud Airport to provide facilities for air carrier operations. "FAR Part 139 Certification" means those regulations in effect as of the date of this MOU regarding the certification of airports for scheduled and unscheduled passenger operations of an air carrier, or those amendments or modifications relating to the certification of airports for scheduled and unscheduled passenger operations of an air carrier which are currently under consideration by FAA.
3. Nighttime Operations. The undersigned parties recommend that MAC implement a program of voluntary restraints on aircraft operations between 10:00 p.m. to 6:00 a.m. and develop specific operational measures to limit the noise impact of aircraft operations between 6:00 a.m. and 7:00 a.m. The voluntary restraint on nighttime operations will be implemented through agreements with airport users; ongoing education of pilots, FBOs or other operators; development of a positive recognition program; notice to any persons known to be operating during these nighttime hours; and identification of preferred runways, flight tracks or other operating procedures. Operations by pilots conducting nighttime currency training to meet FAR Part 91 requirements are permitted between the hours of 10:00 p.m. and midnight. MAC's programs for ongoing education of pilots, FBOs or other operators and positive recognition will be developed in consultation with Eden Prairie.
4. Cargo operations. MAC represents that, based upon the limitations identified in Paragraphs 1 and 2, major air cargo operations will not be able to use the Airport.
5. Sound Insulation and Land Use Compatibility. The undersigned parties recommend that the Final Agreement contain MAC's commitments on sound insulation and Eden Prairie's commitments on promoting compatible land use within areas exposed to noise in excess of DNL 60 dB.
6. Eden Prairie Support. In exchange for MAC's representations and commitments in this MOU, the undersigned parties recommend that Eden Prairie commit in the Final Agreement, described below, to withdraw its opposition to the proposed expansion of Flying Cloud Airport as contained in the Supplement to the Draft Environmental Impact Statement, August 2001. This commitment by Eden Prairie includes refraining from the filing of adverse comments and/or lobbying against the expansion, provided that Eden Prairie may request reasonable additional environmental disclosures in the environmental documentation. In addition, this commitment would prohibit Eden Prairie or its staff (acting in an official capacity) or counsel from promoting, representing, or in any other way supporting other parties opposed to the expansion, including the drafting of documents which may be used by those other parties. The release of data pursuant to the Minnesota Data Practices Act shall not constitute a violation of this provision. Failure by the City of Eden Prairie or its staff or counsel to comply with this provision will render the Final Agreement null and void.

7. To implement the terms of this MOU, the undersigned parties recommend the following actions be undertaken in the order presented:

The Eden Prairie City Council and MAC Commission indicate their support for the recommendations contained in this MOU, subject to review by the FAA.

- b. The City Council and Commission direct Eden Prairie and MAC staff to present the terms of this MOU to the FAA as soon as practicable and obtain the FAA's preliminary determination that the terms of this MOU and the representations and restrictions identified herein are consistent with federal law and MAC's grant assurance obligations to the FAA.
  - c. Upon receiving a preliminary determination from the FAA in a form acceptable to both parties, the City Council and Commission enter into a Final Agreement consistent with this MOU and the FAA's preliminary determination.
  - d. The Commission amend Ordinance No. 51 as described herein to be effective as of the date that the runway extension being considered as part of the proposed expansion is operational. Until the effective date of any and all amendments or the conclusion of any administrative or judicial proceeding described in Paragraph 8, whichever is later, Ordinance 51 shall remain in full force and effect, provided, however, that if Ordinance 51 is determined in a final administrative or judicial decision to be invalid or inconsistent with MAC's grant assurance obligations then the amendments shall take effect immediately, subject to the terms of Paragraph 8.
  - e. Concurrently with Item d, MAC prepare and publish operating rules for the Flying Cloud Airport containing the terms of the Final Agreement and the amendments to Ordinance No. 51.
  - f. Concurrently with Item d, MAC submit for publication mandatory and voluntary restrictions for Flying Cloud Airport in all relevant civilian and military aircraft user guides.
8. The undersigned parties recommend that MAC agree to the following:
- a. To defend vigorously the terms of the Final Agreement and the commitments and restrictions identified therein and any study prepared by MAC under federal law to implement any such commitments and restrictions in response to an informal or formal administrative action or proceeding or the filing of any court action.
  - b. To fully prosecute a defense in any administrative or judicial proceeding identified in Item a and, if necessary, to seek a final FAA order or trial court decision on whether the commitments and restrictions identified in the Final Agreement are consistent with federal law and MAC's grant assurance obligations.
  - c. To support the intervention of Eden Prairie in any administrative or judicial proceeding identified in Item a.
  - d. To (i) defer temporarily enforcement of any commitment or restriction identified in the Final Agreement during the pendency of any administrative or judicial proceeding only if the FAA asserts that such deferral is required to retain eligibility for state or federal financial assistance or passenger facility charges, or (ii) defer enforcement for a period not longer than sixty (60) days to respond to a request by the FAA to defer enforcement only if MAC reasonably believes that the deferral is necessary to retain eligibility for state or federal financial assistance or passenger facility charges and only if MAC commits to work within the sixty day period to address FAA concerns.
  - e. In the event of a final FAA order or court decision that a commitment or restriction identified in the Final Agreement is unlawful or would render MAC ineligible for state or federal financial assistance or passenger facility charges, MAC and Eden Prairie shall amend the Final Agreement with the objective of developing


alternative measures that will guarantee a residential noise environment no worse than the noise environment that is predicted to occur were the restrictions identified in the Final Agreement implemented. The Final Agreement shall define the manner in which the noise environment shall be measured, the noise environment that must be ensured, and illustrative examples of alternative means to ensure such noise environment. If, to satisfy this obligation, MAC is required by the amended agreement to implement a restriction subject to FAR Part 161, MAC shall comply with the commitments in Paragraph 1(a) with respect to such restriction, and if MAC is unsuccessful in implementing such mandatory restriction after satisfying such commitments then MAC shall be relieved of its obligation to implement the relevant restriction.

9. Nothing in this MOU or any subsequent agreement shall require MAC or Eden Prairie to violate the Minnesota Data Practices Act.
10. MAC and Eden Prairie shall agree in the Final Agreement that injunctive relief and specific performance are appropriate remedies for alleged breaches of the Final Agreement. Prior to declaring a default of the Final Agreement in a judicial forum, MAC and Eden Prairie shall agree to negotiate and/or mediate (formally or informally) any disagreement.

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Date: \_\_\_\_\_, 2001

  
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Mayor of Eden Prairie

  
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Eden Prairie Councilmember

  
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MAC Commissioner

  
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MAC Commissioner