
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

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**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.

- 5.1.3 Prosecute fully such defense or opposition provided for above and, if the judicial, administrative or other action or proceeding is not dismissed voluntarily, obtain a final order or decision from the judicial, administrative or other decisionmaker, including without limitation a final, appealable trial court decision or Final FAA Decision.
 - 5.1.4 Each party shall support any request by the other party to intervene or participate in any such judicial, administrative or other action or proceeding.
 - 5.1.5 Each party promptly shall provide the other party with a copy of any correspondence, complaint, filings, pleadings, court orders or other non-privileged writing concerning an administrative or judicial proceeding or action described herein.
- 5.2 **MAC's Authority to Defer Enforcement or Implementation of Commitment.** MAC may defer enforcement or implementation of any commitment contained in this Agreement only as follows:
- 5.2.1 During the pendency of any proceeding or action described in Paragraph 5.1, but only if the FAA asserts in writing that immediate deferral is legally required to retain eligibility for state or federal financial assistance, including eligibility to receive discretionary Airport Improvement Program funds, or to retain authority to impose, collect or use Passenger Facility Charges;
 - 5.2.2 For a period of not longer than sixty (60) days to respond to a written request by the FAA to defer enforcement but only if MAC reasonably believes that the deferral is necessary to retain eligibility for state or federal financial assistance, including eligibility to receive discretionary Airport Improvement Program funds, or to impose, collect or use Passenger Facility Charges and only if MAC works within the sixty day period to address FAA's concerns; or
 - 5.2.3 As strictly necessary to comply with an order of a court of competent jurisdiction.
 - 5.2.4 Each party promptly shall provide the other party with a copy of any letter, court order or other writing referred to in this Paragraph 5.2, or any subsequent letter, court order or other writing regarding the same subject.
- 5.3 **Duties in Response to Adverse Judicial or Administrative Decision.** In the event a Final FAA Decision or appealable court decision determines that a commitment or representation contained in this Agreement, excluding the commitment contained in Paragraph 3.6.2, is unlawful, would render MAC ineligible for state or federal financial assistance, including discretionary Airport Improvement Program funds, would terminate MAC's authority to impose, collect or use Passenger Facility Charges, or otherwise prevents MAC from performing as required in this Agreement, MAC shall adopt alternative measures

designed to guarantee that the total number of residences projected (five years from the date of the Final FAA decision or appealable court decision) to be exposed to noise associated with the Airport in excess of DNL 60 dB shall be no greater than the number of residences MAC and Eden Prairie mutually agree reflects the number of residences that are projected (after the same five years) to be exposed to noise in excess of DNL 60 dB if the commitments or restriction contained in Article 3 were fully in force and effect.

5.3.1 The alternative measures shall include mandatory measures or a combination of mandatory and voluntary measures but shall not include voluntary measures alone.

5.3.2 In the event that Eden Prairie and MAC are unable to agree on whether the proposed measures would achieve the standard contained in this Paragraph 5.3, the parties shall complete the formal mediation described in Article 6. In the event that the parties are unable to agree after completing formal mediation, the parties shall submit to binding arbitration. The scope of the mediation and arbitration shall not include consideration of whether MAC is obligated to adopt a measure that will satisfy the standard contained in this Paragraph 5.3.

5.3.3 Notwithstanding the above, no proposed agreement, measure or judgment in arbitration shall render MAC ineligible for state or federal financial assistance, including discretionary Airport Improvement Program funds, or terminate MAC's authority to impose, collect or use Passenger Facility Charges

5.4 **Duties in Response to Adverse Judicial or Administrative Decision on Stage 2 Ban.** In the event a Final FAA Decision or appealable court decision determines that a mandatory prohibition on operations at the Airport by Stage 2 Aircraft imposed pursuant to Paragraph 3.6.2 is unlawful, would render MAC ineligible for state or federal financial assistance, including discretionary Airport Improvement Program funds, or would terminate MAC's authority to impose, collect or use Passenger Facility Charges, MAC shall be excused from the obligation to implement the prohibition on Stage 2 Aircraft, provided that MAC shall continue to limit operations by Stage 2 Aircraft at the Airport pursuant to Paragraph 3.6.1.

ARTICLE 6

DISPUTE RESOLUTION

6.1 **Notice of Default.** At no time shall Eden Prairie or MAC be deemed to be in default under, or breach of, this Agreement unless and until the other party has provided written notice to the parties identified in Paragraph 8.4 specifying such alleged breach or default ("Notice of Default") and such alleged breach or default has not been cured as provided in Paragraph 6.2.

- 6.2 **Right to Cure Default.** The party who has received a Notice of Default shall have thirty (30) days in which to cure the alleged breach or default and provide notice to the other party that such alleged breach or default has been cured.
- 6.3 **Informal Dispute Resolution.** Immediately after receipt of a Notice of Default, the Executive Director of MAC and the City Manager of Eden Prairie shall meet and attempt to resolve the matter.
- 6.4 **Formal Mediation.** If the parties fail to resolve the matter informally under Paragraph 6.3 within thirty (30) days, the parties shall submit their dispute to a mediator. The parties shall have ten (10) days to select a mediator. If the parties are unable to agree upon a mediator, the Chief Judge of the 4th Judicial District, Hennepin County, Minnesota, shall select a mediator. The mediation shall be conducted pursuant to the rules generally used by the mediator in the mediator's practice, provided that the entire mediation process be concluded within 30 days of appointment of the mediator, or within such other time as the parties may agree in writing. If the mediation process fails to resolve the matter, both informal and formal dispute resolution shall be deemed to be complete.
- 6.5 **Costs of Alternative Dispute Resolution.** Each party shall bear its own costs of the informal dispute resolution process and formal mediation process described above. The parties shall share equally the fees and expenses of the mediator.
- 6.6 **Dispute Resolution Process Mandatory.** No action shall be commenced in any court to enforce or otherwise apply, interpret, or seek cure for a breach of, this Agreement, excluding an action requesting preliminary or temporary relief, before the completion of the informal and formal dispute resolution process set forth in this Article 6. Neither party shall assert, plead, raise, allege, or rely upon the applicable statute of limitations, laches, timeliness, delay, or any other defense based on the passage of time during the dispute resolution process in any subsequent judicial or administrative proceeding. The dispute resolution provisions set forth in this Article 6 shall apply only to MAC and Eden Prairie, and shall not apply to any successor in interest to either Party.
- 6.7 **Confidentiality.** The alternative dispute resolution process described in this Article 6 constitutes compromise negotiation for purposes of applicable rules of evidence. Information prepared for or disclosed during the alternative dispute resolution process shall be inadmissible in evidence pursuant to Rule 408 of the Federal Rules of Evidence or Rule 408 of the Minnesota Rules of Evidence, and shall be withheld from disclosure to the maximum extent permissible under the Minnesota Data Practices Act and other applicable laws.
- 6.8 **Waiver of Rights.** The failure of either party to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of such violation or breach, or of any future violation, breach or wrongful conduct. Subsequent acceptance of performance under this Agreement by Eden Prairie or MAC shall not be deemed to be a waiver of any preceding breach by the other Party of the terms of this

Agreement, regardless of Eden Prairie's or MAC's knowledge of such preceding breach at the time of acceptance of performance. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of such right or power at any other time, nor shall any failure of either party to require or exact full and complete compliance with any of the covenants or conditions of this Agreement be construed as changing in any manner the terms hereof or preventing either party from enforcing the full provisions hereof.

ARTICLE 7 **REMEDIES**

- 7.1 **General Remedies: Specific Performance and Injunctive Relief.** The parties acknowledge and agree that damages as a result of a breach of this Agreement by either party are not readily ascertainable, that money damages or other legal relief will not adequately compensate for any such breach, and that the party that has not breached this Agreement is entitled to specific performance of those obligations under this Agreement and/or injunctive relief to compel performance of those obligations. Subject to the right to seek specific performance, stated above, the parties expressly reserve their right to oppose a request by the other party for a preliminary or permanent injunction, including grounds that the party seeking relief would not suffer irreparable harm as a result of such breach.
- 7.2 **Specific Remedies.** The parties further acknowledge that the breach of certain commitments and representations provided for in this Agreement necessitate different remedies, including the following:
- 7.2.1 **Eden Prairie Commitments Concerning Proposed Airport Expansion.** In the event that Eden Prairie has been found by a court of competent jurisdiction to have breached the commitments contained in Paragraph 4.2 concerning the Proposed Airport Expansion, MAC shall be relieved of its commitments and representations contained in this Agreement as it chooses, and this Agreement otherwise shall be voidable by MAC.
- 7.2.2 **MAC Commitments and Representations.** In addition to any remedy that might be available under Paragraph 7.1, in the event that MAC is found by a court of competent jurisdiction to have breached the commitments and representations contained in Article 3, Eden Prairie shall be relieved of its commitments and representations contained in Article 4 as it chooses.

ARTICLE 8 **GENERAL PROVISIONS**

- 8.1 **Duration.** This Agreement shall remain in full force and effect unless and until terminated by written agreement of both parties.
- 8.2 **Amendment.** This Agreement may be altered, amended or modified only by a written instrument executed pursuant to the governmental consent of both Eden

Prairie and MAC. Neither this Agreement, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by instrument in writing.

8.3 **Headings.** Headings have been inserted herein only as a matter of convenience and for reference, and are not to be considered when construing the provisions of this Agreement.

8.4 **Notices.** Where the terms of this Agreement provide that either party will furnish or provide any document or material to the other party, unless otherwise provided herein, such document or material shall be delivered by hand to each party at the following address, respectively:

If to Eden Prairie: City Manager
 City of Eden Prairie
 8080 Mitchell Road
 Eden Prairie, MN 55344
 (952) 949-8399
 (952) 949-8390 (fax)

With a copy to: Richard F. Rosow, City Attorney
 Gregerson, Rosow, Johnson & Nilan, Ltd.
 1600 Park Building
 650 Third Avenue South
 Minneapolis, MN 55402-4337
 (612) 338-0755
 (612) 349-6718 (fax)

If to MAC: Jeffrey W. Hamiel, Executive Director
 Metropolitan Airports Commission
 6040 28th Avenue South
 Minneapolis, MN 55450-2799
 (612) 726-8188
 (612) 726-5306 (fax)

With a copy to: Thomas W. Anderson, General Counsel
 Metropolitan Airports Commission
 6040 28th Avenue South
 Minneapolis, MN 55450-2799
 (612) 726-8178
 (612) 726-5306 (fax)

8.4.1 Such notice shall be deemed to have been received on the date of its delivery to the above-listed address.

8.4.2 If hand delivery is not possible, the document or material shall be sent to the above-listed address by overnight express courier service, and shall be

deemed to have been received on the first business day after the date of its receipt by the express courier service.

- 8.5 **Exhibits.** Exhibits 1 through 5 of this Agreement are incorporated herein by reference and made a part hereof.
- 8.6 **Counterparts.** This Agreement may be executed in four counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 8.7 **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Minnesota.
- 8.8 **Severability.** If any provision, paragraph, or subparagraph of this Agreement is adjudged by any court to be invalid, illegal, or unenforceable in whole or in part, this adjudication will not affect the validity of the remainder of this Agreement, including any other provision, paragraph, or subparagraph. In the event that any of the commitments or representations contained in Article 3 is adjudged by any court to be invalid, illegal, or unenforceable in whole or in part, Section 5.3 shall survive as an independent obligation.
- 8.9 **No Third-Party Beneficiary.** This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder except as specifically provided in this Agreement.
- 8.10 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors in interest and assigns of Eden Prairie and of MAC.
- 8.11 **Complete Agreement.** This Agreement embodies and supercedes, to the extent of any inconsistency, all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter hereof.
- 8.12 **Change in Law.** If either party believes that a new federal or Minnesota statute or regulation may result in either party being unable to perform any obligation contained in this Agreement, MAC and Eden Prairie shall meet and confer to discuss in good faith (1) the specific effect of the change in law on this Agreement and (2) whether there are possible amendments to this Agreement that will confer substantially the same benefits as this Agreement and conform to the new or amended federal or Minnesota statute or regulation. The parties shall treat each obligation as independent and allow the change in law to affect performance under this Agreement only to the extent made necessary by the change in law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

METROPOLITAN AIRPORTS COMMISSION

BY: _____
Jeffrey W. Hamiel
Executive Director

CITY OF EDEN PRAIRIE, MINNESOTA

BY: _____
Nancy Tyra-Lukens
Mayor

BY: _____
Scott Neal
City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by Nancy Tyra-Lukens, Mayor, on behalf of the City of Eden Prairie, a municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by Scott Neal, City Manager, on behalf of the City of Eden Prairie, a municipal corporation.

Notary Public

EXHIBITS

Exhibit 1: Amended Ordinance No. 51

Exhibit 2: Supplement to the Draft Environmental Impact Statement (August 2001)

Exhibit 3: Eden Prairie Resolution Repealing Resolutions No. 88-299 and No. 92-124

Exhibit 4: Chapters of Eden Prairie Comprehensive Guide Plan Update on Flying Cloud Airport

Exhibit 5: Map of Residences Scheduled for Exterior to Interior Noise Attenuation Testing

EXHIBIT 1

METROPOLITAN AIRPORTS COMMISSION ORDINANCE NO. 97

An Ordinance of the Metropolitan Airports Commission relating to the management and operation of its airports, adopted to promote the public health, peace, welfare and safe operations; restricting the operations of aircraft at and from Flying Cloud Airport; and prescribing the penalties for violation thereof.

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 and the City of Eden Prairie have negotiated a Memorandum of Understanding and Final Agreement concerning Flying Cloud Airport and Ordinance No. 51, which Final Agreement is contingent upon MAC amending Ordinance No. 51 in a manner substantially the same as provided herein; and

WHEREAS, MAC intends to amend Ordinance No. 51 in such manner as will preserve certain of the protections afforded Ordinance No. 51 as a restriction adopted prior to the enactment of the Airport Noise and Capacity Act of 1990; and

WHEREAS, this Ordinance No. 97 is also referred to as Ordinance No. 51 as amended.

Now, therefore, the Metropolitan Airports Commission does ordain to amend Ordinance No. 51 to read as follows:

SECTION 1 - DEFINITIONS

- 1.1 Airport. Flying Cloud Airport, a public airport owned by and under the supervision, operation, direction and control of the Commission, and located in the County of Hennepin and State of Minnesota.
- 1.2 Certified Maximum Gross Takeoff Weight. The maximum takeoff weight of an aircraft as designed and certified by the manufacturer and does not refer to the actual weight of an aircraft or any variant to the certified weight issued by the manufacturer or the Federal Aviation Administration.

- 1.3 Commission. The Metropolitan Airports Commission, a public corporation of the State of Minnesota.
- 1.4 Maintenance Run-Up. The sustained operation of an aircraft engine for the purposes of maintenance, repair or testing. A Maintenance Run-Up does not include the operation of an aircraft engine in direct conjunction with a takeoff or landing, including the run-up of an aircraft engine performed immediately prior to takeoff.
- 1.5. Person. Any natural person, corporation, partnership, association or other legal entity having legal authority over the operation of jet aircraft to, at or from the Airport or who is in actual control as pilot of such aircraft.

SECTION 2 - AIRCRAFT OPERATIONS

- 2.1 Curfew on Maintenance Run-Ups. Maintenance Run-Ups at Flying Cloud Airport between 10:00 p.m. (2200) local time and 7:00 a.m. (0700) local time are prohibited.
- 2.2 Aircraft Weight Restriction. The taking off or landing of any aircraft at Flying Cloud Airport with a Certified Maximum Gross Takeoff Weight of 60,000 pounds or greater is prohibited.
- 2.3 Exceptions. The terms of this Ordinance shall not apply in the case of an emergency and shall not apply to aircraft owned and operated by the U.S. Government. The prohibition identified in Section 2.1 does not apply to unscheduled Maintenance Run-Ups performed between 10:00 p.m. and 7:00 a.m. where strict compliance with the prohibition would not allow sufficient time to permit the aircraft to depart on schedule the following morning. Any aircraft owner or operator claiming to qualify for an exception, excluding the owner or operator of a U.S. Government aircraft, must notify the Commission within 24 hours by submitting the form designated by the Commission's Director of Reliever Airports or the Director's designated representative for this purpose.

SECTION 3 - PENALTY. Willful violation of the terms hereof by any Person operating or in legal control of aircraft shall constitute a misdemeanor and upon conviction shall be punished by sentence in accordance with Minnesota Statutes, Section 609.03 or as the same may from time to time be amended.

SECTION 4 - COMMISSION RIGHT TO ACTION. Prosecution and conviction under this Ordinance shall be without prejudice to and the Commission shall have such civil rights at law or equity as Airport owner and operator and as persist under agreements now or hereafter in effect between it and Persons having legal authority over and control of the operation of an aircraft to, at or from the Airport, including lease agreements.

SECTION 5 - SAVING CLAUSE. If any part, provision or provisions of this Ordinance shall be held to be unconstitutional or otherwise illegal, such unconstitutionality or illegality shall not

effect the validity of remaining parts of the Ordinance, and the Commission hereby declares that it would have passed the remaining parts of this Ordinance in any event, had it known that such part, provision or provisions might be unenforceable because unconstitutional or illegal.

SECTION 6 – REPEALER. As of the effective date of this Ordinance, the Commission’s Ordinance No. 51 is repealed except as provided herein.

SECTION 7 - EFFECTIVE DATE. This Ordinance shall be of full force and effect immediately upon adoption of this Ordinance and upon filing of same with proof of publication with the Secretary of State of the State of Minnesota.

EXHIBIT 2

SUPPLEMENT TO
THE DRAFT ENVIRONMENTAL IMPACT STATEMENT,
EXPANSION OF FLYING CLOUD AIRPORT
(AUG. 2001) (WITHOUT APPENDICES)

EXHIBIT 3

**CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA**

RESOLUTION NO. 02- _____

RESOLUTION REPEALING RESOLUTIONS No. 88-299 and 92-124

WHEREAS, the Metropolitan Airports Commission (hereinafter “MAC”) owns and operates 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 prohibited 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, 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, by public statements and other actions, including the adoption of Resolution No. 88-299, adopted December 20, 1988 and Resolution No. 92-124, adopted June 2, 1999 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, the Eden Prairie City Council and the MAC Commission have approved that certain **FINAL AGREEMENT CONCERNING FLYING CLOUD AIRPORT AND ORDINANCE 51**, dated December 2002 (hereinafter the “Final Agreement”) which concerns the expansion of the Flying Cloud Airport and the amendment of MAC Ordinance 51;

WHEREAS, the Final Agreement is not effective unless, among other matters, MAC adopts Ordinance 97 as an amendment to Ordinance 51 and the City repeals Resolution 88-299 and Resolution 92-124; and

WHEREAS, on December 16, 2002 MAC adopted Ordinance 97 as an amendment to Ordinance 51 as set forth in the Final Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE EDEN PRAIRIE CITY COUNCIL,
THAT:

Resolution 88-299 and Resolution 92-125 are hereby repealed.

ADOPTED by the Eden Prairie City Council on December 17, 2002.

Nancy Tyra-Lukens, Mayor

(Seal)

ATTEST:

KATHLEEN PORTA, CITY CLERK

EXHIBIT 4

**CITY OF EDEN PRAIRIE COMPREHENSIVE PLAN UPDATE
CHAPTER 2: VISION, GOALS AND POLICIES**

AVIATION GOALS

AVIATION GOAL 1	Promote land use compatibility between Flying Cloud Airport and surrounding land uses.
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Policies

The City shall:

1. Review proposed development on land proximate to the airport, and notify the Metropolitan Airports Commission of any proposals, to determine consistency between proposed development and the airport with respect to safety and noise.
2. Support implementation of the Final Agreement Concerning Flying Cloud Airport and MAC Ordinance No. 51 Between the City of Eden Prairie and the Metropolitan Airports Commission entered into on December 17, 2002.
3. Support maintaining the Flying Cloud Airport as a “minor use” airport not improved beyond the design criteria of this functional classification.

AVIATION GOAL 2	Minimize the impact of aircraft noise upon noise-sensitive land uses.
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Policies

The City shall:

1. Support the Metropolitan Council’s Land Use Compatibility Guidelines for Aircraft Noise for new development.
2. Support implementation of the Final Agreement Concerning Flying Cloud Airport and MAC Ordinance No. 51 Between the City of Eden Prairie and the Metropolitan Airports Commission entered into on December 17, 2002.

3. Encourage and support the noise abatement programs for the airport.

AVIATION GOAL 3	Support action by the Metropolitan Airports Commission to protect land areas within defined State Safety Zones.
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Policies

The City shall:

1. Support the Metropolitan Airports Commission in acquiring undeveloped property at fair market value impacted by State Safety Zones A and B if applied to Flying Cloud Airport.
2. Support payments in lieu of taxes to recover lost City revenue that would be realized if acquired land were developed for private, commercial uses.

AVIATION GOAL 4	Protect all primary, horizontal, conical approach, transitional and general airspace from vertical intrusions.
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Policies

The City shall:

1. Review development proposals based on meeting FAA and MnDOT Office of Aeronautics airspace criteria.
2. Notify the FAA, MnDOT Office of Aeronautics, and Metropolitan Airports Commission of any development proposals that may involve review of FAA and MnDOT Office of Aeronautics airspace criteria.

AVIATION GOAL 5	Establish and implement a Design Framework Manual for existing and new development at Flying Cloud Airport.
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Policies

The City shall:

1. Support extension of municipal sanitary sewer and water to the airport.
2. Develop guidelines for architectural continuity for new building and hangar construction, including guidelines for signs, lighting, and screening of trash areas.
3. Work to eliminate or replace deteriorating first generation hangar buildings.
4. Support landscaping improvements on airport property to help mitigate noise and visual impacts to neighboring properties.

**CITY OF EDEN PRAIRIE COMPREHENSIVE PLAN UPDATE
CHAPTER 6: AIRPORT ELEMENT**

6.1 INTRODUCTION

Flying Cloud Airport is one of six metropolitan reliever airports owned and operated by the Metropolitan Airports Commission (MAC). It is located in south central Eden Prairie along the Minnesota River bluffs. The MAC acquired the airport in 1947 when it consisted of 134 acres. Today, the airport contains 780 acres, representing 3.45% of the City's total land area.

The airport is classified as a General Utility Airport by the Federal Aviation Administration (FAA) and a Minor airport by the Metropolitan Council. In 2000, the Minnesota Legislature passed a law prohibiting the MAC from expanding any metropolitan system airport from a Minor to an Intermediate classification without legislative approval. A Minor airport is defined as an airport with primary runway not exceeding 5,000 feet in length.

There are two parallel east/west hard-surfaced runways 3,600 feet and 3,900 feet in length, and one north/south hard-surfaced runway 2,700 feet in length. Runways are lighted for night use and use various approach lighting aids. The airport is tower controlled and uses a full instrument approach landing system. MAC reported 234,475 aircraft operations at the airport in 1999 by piston- and turbine-powered aircraft.

Services at the airport consist of aircraft charter, aircraft sales and rental, aircraft maintenance and storage, and flight training programs.

No municipal sanitary sewer or water service is provided to the airport. Individual private septic systems and wells are currently in use.

In 1978, the MAC adopted a weight restriction for the airport known as Ordinance 51. It prohibits all turbojet aircraft operations except those with a 20,000 pound maximum take off weight (MTOW) or less that can meet noise emission levels of Federal Aviation Regulation Part 36. In 1999, the Federal Aviation Administration advised MAC that Ordinance 51 may violate MAC's contractual obligation to provide public access to the airport on reasonable terms and without unjust discrimination.

This Airport Element discusses the City's land use policies relating to the airport, including, in particular, currently proposed airport expansion. The City has entered into an agreement with MAC, described herein, that it believes will mitigate the potential adverse environmental consequences of the expansion and promote land use compatibility.

6.2 LAND USE COMPATIBILITY

The City intends that land uses surrounding the airport be compatible with the airport and vice versa. Airport impacts that would affect land use compatibility include noise and safety.

Land use to the north of the airport, along CSAH 1, is mainly Public Open Space and Low Density Residential, with some Medium Density Residential and Industrial use. To the south is the Minnesota River Valley, which is Public Open Space.

To the east of the airport, most of the land use is Low Density Residential, and Public Open Space, including Homeward Hills Park. The landfill adjacent to TH 212, guided Industrial, is permanently closed and now compatible with the airport.

Land use to the west is generally Low Density Residential, Church, and Public Open Space to accommodate runway approach zones. To the southwest, land use is Office, Medium Density Residential, Low Density Residential, and Public Open Space. The Office use serves as an important land use buffer between the airport and the residential uses.

The MAC proposes to acquire land to the east, west and southwest of the existing airport to accommodate a proposed runway expansion plan and to further land use compatibility. The City has revised the Land Use Guide Plan for 2000-2020 to show this area guided for Airport use.

In addition to the aviation functions and facilities at Flying Cloud Airport, seaplane activities are occurring on Lake Riley and Bryant Lake. To the City's knowledge, all seaplane operations are in conformance with the Minnesota Department of Transportation Rules and Regulations.

6.3 AIRCRAFT NOISE ZONES

The Metropolitan Council's *Land Use Compatibility Guidelines for Aircraft Noise* indicate that a Day-Night Sound Level (DNL) of 65 dBA represents the threshold of significant impact for noise-sensitive land uses. The Metropolitan Council also considers noise-sensitive land uses in the DNL 60-65 dBA contour as potentially incompatible with aircraft noise.

Four aircraft noise exposure zones (NEZ) are defined within the noise exposure map for determining land use compatibility. The noise exposure map is based on MAC's Long-Term Comprehensive Plan approved by the Metropolitan Council in 1996.

- NEZ 1 contains the land within the DNL 75+ dBA noise contour. This zone does not apply to Flying Cloud Airport.
- NEZ 2 contains the land within the DNL 70-75 dBA noise contour. This zone is contained

within airport property.

- NEZ 3 contains the land within the DNL 65-70 dBA noise contour. The noise in this zone can be categorized as significant.
- NEZ 4 contains the land within the DNL 60-65 dBA noise contour. The City finds that noise in this zone also can be considered significant.

Figure 6.1 shows the noise zones for the Flying Cloud airport and how they overlay land uses. Eden Prairie has adopted by reference the Metropolitan Council's *Land Use Compatibility Guidelines for Aircraft Noise* for new development. In addition, the City will notify MAC of any public hearing at which the City 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 dBA.

6.4 AIRSPACE AND LAND USE SAFETY ZONES

Formal safety zones for the airport to reflect State standards can be created only by creation of a zoning authority by MAC or a joint, zoning authority of MAC and Eden Prairie. The MAC has not created the zoning authority permitted by state law to control development in these areas. Eden Prairie and MAC have been unable to reach an agreement on a joint zoning authority due to unresolved liability issues.

The MAC and Eden Prairie nevertheless use the safety zones for planning purposes. Figure 6.2 shows the boundaries of the safety zones for the existing airport.

- Safety zone A is a “no build” zone. It is two-thirds the length of the runway and is to be maintained free of structures.
- Safety zone B is a “limited development” zone. It is one-third the length of the runway and the minimum lot size is to be three acres.
- Safety zone C is a “height limitation” zone. It is based on the primary, horizontal, approach, transition, and conical zones as shown in the airport zoning height map.

The MAC and Eden Prairie have taken several steps to ensure the safe operation of the Airport consistent with these state standards. MAC is acquiring the property potentially impacted by safety zones A and B to maintain clear approach corridors to the airport. The City works with FAA and Minnesota Department of Transportation guidelines to protect safety zone C, including all primary, horizontal, conical approach, transitional, and general airspace from vertical

intrusions by reviewing development proposals for consistency with FAA and MnDOT Office of Aeronautics airspace criteria. The City's zoning ordinance contains height limits ranging between 30 and 45 feet, depending on the zoning district. Towers and antennas may be higher. All development proposals are reviewed based on the airport zoning height map, as shown in Figure 6.3. Any height request that may potentially impact the airport height restrictions is submitted to the FAA, MnDOT Office of Aeronautics and MAC for their review.

6.5 PROPOSED EXPANSION OF FLYING CLOUD AIRPORT

The MAC is proposing to expand Flying Cloud Airport by extending the two parallel runways and constructing additional hangar space. Runway 9L/27R would be extended from 3,600 feet to 3,900 feet, and Runway 9R/27L would be extended from 3,900 feet to 5,000 feet. MAC proposes to acquire a total of 280 acres to protect the expanded runway approach safety zone area and to accommodate the additional hangar space. The MAC has already acquired much of this property. MAC predicted in August 2001 that 302,982 aircraft operations would occur in 2010 if the proposed improvements were made. Figure 6.4 shows the proposed expanded airport.

City policy supports only those changes in the airport that would retain the airport's fundamental character. Without mitigation, extending the runways, building new hangars, and abandoning the weight limit for turbojet aircraft would be a fundamental change in the character of the airport.

The City and MAC have executed a Final Agreement Concerning Flying Cloud Airport And MAC Ordinance No. 51 (December 17, 2002). The City finds that the commitments contained in the Final Agreement will mitigate the potential adverse environmental consequences of the expansion and maintain the character of the airport. On this basis, the City withdrew its opposition to the proposed airport expansion.

The mandatory and voluntary restrictions set forth in the Final Agreement include:

1. Mandatory restrictions on nighttime maintenance run-ups, and operation by aircraft weighing more than 60,000 pounds certified maximum gross take off weight.
2. Commitments by MAC not to increase the pavement strength, increase the runway length, or seek a certificate to accommodate commercial passenger service at the airport.
3. Development of a sound insulation program to test, and insulate where appropriate, residences exposed to noise in excess of DNL 60 dBA.
4. Adoption by MAC of a voluntary restraint on nighttime operations and recommendations for reducing the noise of early morning departures.

5. Adoption by MAC of a voluntary restraint on operations by Stage 2 aircraft and a commitment to pursue a ban on all Stage 2 aircraft if operations exceed a specific limit.

6.6 IMPLEMENTATION STRATEGIES

Land Use Compatibility: The City will promote land use compatibility for lands surrounding Flying Cloud Airport by reviewing all proposed development in areas surrounding the airport for consistency with the airport and by periodically reviewing its land use plans and policies. 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 dBA.

Aircraft Noise: The City supports the Metropolitan Council's *Land Use Compatibility Guidelines for Aircraft Noise* for new development. The City will work toward minimizing the impact of aircraft noise upon noise-sensitive land uses by encouraging and supporting noise abatement programs for the airport. As part of the Final Agreement, MAC will develop a methodology agreed upon by MAC and the City, to determine existing exterior to interior noise reduction level. In the event a residence has an exterior to interior noise attenuation of less than 20dBA, MAC shall provide sound insulation to achieve a noise reduction of at least 20dBA. No residence for which building permits were issued on or after December 4, 2001 shall be eligible to receive testing or sound insulation.

Safety Issues: The City will work within existing FAA and MAC guidelines to protect all primary, horizontal, conical approach, transitional, and general airspace from vertical intrusions by reviewing development proposals based on meeting FAA and MnDOT Office of Aeronautics airspace criteria. The City will notify the FAA, MnDOT Office of Aeronautics and MAC of any development proposals that may involve review of FAA and MnDOT Office of Aeronautics airspace criteria. Any sponsor who proposes any construction or alteration that would exceed a height of 200 feet above ground level at the site, or any construction or alteration of greater height than an imaginary surface extending upward and outward at a slope of 100:1 from the nearest point of the nearest runway of a public airport shall notify the Commissioner of MnDOT Office of Aeronautics.

Municipal Sanitary Sewer and Water Service: It is anticipated that municipal sanitary sewer and water will be extended to the airport in 2003.

Heliports: No heliports exist in the City. It is anticipated that if any heliport planning or construction occurs in the City, it will take place at Flying Cloud Airport.

Design Issues: The City will seek to work with the MAC to establish and implement a Design Framework Manual for new development at Flying Cloud Airport. The Framework would include guidelines for architectural continuity for new building and hangar construction, including guidelines for signs, lighting, and screening of trash areas. The City will support landscaping improvements on airport property to help mitigate noise and visual impacts to

neighboring properties. The City will encourage the MAC to eliminate or replace deteriorating first generation hangar buildings.

EXHIBIT 5

**MAP OF RESIDENCES
SCHEDULED FOR EXTERIOR TO INTERIOR NOISE ATTENUATION TESTIN**

