

**AGENDA
HASTINGS CITY / BARRY COUNTY AIRPORT COMMISSION
REGULAR MEETING**

**April 24, 2024
Hastings City/Barry County Airport
2505 Murphy Drive, Hastings, MI 49058**

1. Call to Order at 4:30 p.m.
2. Pledge of Allegiance
3. Roll Call
4. *Approval of Agenda
5. **Limited Public Comment
6. *Meeting Minutes
 - A. *Consider approval of the March 27, 2024 Regular Meeting Minutes.
7. Financial Reports
 - A. *Consider approval of the March 2024 Financial Report.
8. Old Business
 - A. Review of Noteboom lease of Larry Baum donated hangar.
 - B. Approval of Expenditure to Purchase a New Van for Airport.
9. New Business
 - A. Contract for Airport Management Services
10. Airport Manager's Report
11. Board Comments
12. ** Limited Public Comment
13. Adjournment

* Indicates Attachment

**** Guidelines for Public Comment**

Public Comment is welcomed and appreciated. Please follow these simple guidelines to ensure all have an opportunity to be heard. All comments and questions will be made through the chair. All comments will be made in a courteous and civil manner; profanity and personal attacks will not be tolerated. Please limit the length of your comments to 3 minutes. If you are a member of a group, please appoint a spokesperson to speak on behalf of the group (those speaking on behalf of a group may be provided additional time). Please state your name before offering comment.

Hastings City/Barry County Airport Commission
Draft Meeting Minutes
March 27, 2024

Call to Order. The meeting was called to order by Chair Holley at 4:30 p.m.

Pledge of Allegiance. Holley led the Pledge of Allegiance.

Roll Call. Roll was taken. Members Present: Holley, Teunessen, Tossava, Smelker, and Nesbitt.
Member Absent: None.

Approval of Agenda. It was proposed to add one item under Old Business: Item A: Consideration of Noteboom lease of Larry Baum donated hangar; and two items to the agenda under New Business: Item A: Consideration of selling airport vehicles to purchase mini-van and Item B: Discuss repayment of loan from City and County.

Motion by Tossava, second by Teunessen to approve the agenda for the March 27, 2024 meeting as amended. All members present voting yes; motion carried.

Limited Public Comment. Randy Van Liere commented on the leases at the airport. Ross DeMaagd commented on the minutes of the Hastings Flying association and the proposed terminal building project.

Approval of Minutes. There were no modifications proposed for the draft minutes of the February 28, 2024 regular meeting of the Airport Commission.

Motion by Teunessen, second by Smelker to approve the minutes from the February 28, 2024 regular meeting of the Airport Commission as presented. All members present voting yes; motion carried.

Financial Reports. Commission members reviewed the financial statements. No comments or questions were presented.

Motion by Smelker, second by Teunessen to accept and place on file the financial report for February 2024. All members present voting yes; motion carried.

Old Business.

Item A: Consideration of Noteboom lease of Larry Baum donated hangar.

Noteboom informed the commission that he had a verbal agreement with Larry Baum that he could use the hangar that Larry donated rent free. After discussion the commission asked Mark to prepare a lease for their review and consideration.

New Business.

Item A: Consideration of selling airport vehicles to purchase mini-van. Noteboom proposed selling the airport car and large van through Range-bid and then purchase a mini-van to replace them.

Motion by Teunessen, second by Tossava to authorize the airport manager to sell the airport car and large van through Range-bid. All members present voting yes; motion carried.

Item B: Discuss repayment of loan from City and County. Nesbitt asked the commission if there was interest in asking the city and county to consider the loan a non-repayable investment in the airport. After discussion, it was the consensus to leave it as a repayable loan.

Airport Manager's Report. Noteboom provided comments from the written manager's report.

Board Comments. Tossava suggested adding to the agenda a report from the Hastings Flying Association. It was the consensus of the commission to add, following the Airport Manager's Report, a report from the Hastings Flying Association.

Limited Public Comment. Van Liere commented on additional compensation for training an assistant manager. Cordova requested a year-long lease and that his wife be added to the lease.

Adjournment.

Motion by Smelker, second by Tossava to adjourn the meeting at 5:20 p.m. All members present voting yes; motion carried.

Revenue Status Report

revstat.rpt
04/09/2024 10:35AM
Periods: 3 through 3

BARRY COUNTY
3/1/2024 through 3/31/2024

Account Number	Adjusted Estimate	Revenues	Year-to-date Revenues	Balance	Prct Rcvd
295 AIRPORT FUND					
000 DEPT					
000-553-000 STATE GRANT	0.00	0.00	0.00	0.00	0.00
000-580-000 CONTRIBUTIONS FROM LOCAL UNITS CONT	100,000.00	0.00	0.00	100,000.00	0.00
000-608-000 HANGER RENT & TIE DOWN FEES	155,000.00	15,698.20	50,908.20	104,091.80	32.84
000-609-050 OTHER	250.00	0.00	0.00	250.00	0.00
000-648-000 SALE OF GAS	225,000.00	23,529.30	44,334.73	180,665.27	19.70
000-675-000 DONATIONS	0.00	0.00	0.00	0.00	0.00
000-679-000 MISC REVENUE	1,000.00	0.00	11,031.00	-10,031.00	1103.10
000-679-010 MISC REIMBURSEMENT	0.00	0.00	0.00	0.00	0.00
000-699-000 APPROPRIATION TRANSFER IN CONTROL	100,000.00	0.00	0.00	100,000.00	0.00
Total AIRPORT FUND	581,250.00	39,227.50	106,273.93	474,976.07	18.28
Grand Total	581,250.00	39,227.50	106,273.93	474,976.07	18.28

**BARRY COUNTY
EXPENDITURE VS BUDGET REPORT
PERIOD ENDING 3/2024 FISCAL PERIOD 3 YEAR 2024**

4/1/2024

FUND 295 AIRPORT FUND	BUDGETED EXPENSE	ACTUAL MTD	ACTUAL YTD	BUDGET REMAINING	PERCENT REMAINING
FUND ACCOUNT # DESCRIPTION					
895 AIRPORT					
708 000	85,000.00	8,583.33	25,749.99	59,250.01	69.71%
	85,000.00	8,583.33	25,749.99	59,250.01	69.71%
	TOTAL PAYROLL EXPENDITURES				
727 000	800.00	0.00	108.36	691.64	86.46%
729 000	180.00	0.00	0.00	180.00	100.00%
734 000	13,500.00	478.13	876.82	12,623.18	93.51%
745 000	500.00	0.00	0.00	500.00	100.00%
748 000	500.00	0.00	0.00	500.00	100.00%
802 010	0.00	0.00	0.00	0.00	0.00%
806 000	4,000.00	0.00	0.00	4,000.00	100.00%
807 000	1,200.00	51.00	51.00	1,149.00	95.75%
808 000	0.00	0.00	0.00	0.00	0.00%
809 000	1,650.00	0.00	1,195.00	455.00	27.58%
816 000	0.00	0.00	0.00	0.00	0.00%
851 000	100.00	124.99	374.97	-274.97	-274.97%
910 000	8,100.00	1,049.95	1,049.95	7,050.05	87.04%
921 000	12,000.00	1,035.47	3,283.74	8,716.26	72.64%
925 000	750.00	55.00	165.00	585.00	78.00%
931 000	4,500.00	67.71	67.71	4,432.29	98.50%
932 000	4,000.00	1,520.00	1,905.61	2,094.39	52.36%
960 000	1,000.00	0.00	2.50	997.50	99.75%
960 100	6,750.00	596.78	1,072.34	5,677.66	84.11%
974 000	6,500.00	0.00	0.00	6,500.00	100.00%
975 000	0.00	0.00	0.00	0.00	0.00%
976 000	15,000.00	0.00	0.00	15,000.00	100.00%
977 000	17,500.00	0.00	3,217.21	14,282.79	81.62%
979 000	415,000.00	0.00	167.72	414,832.28	99.96%
979 010	200,000.00	15,129.88	22,606.88	177,393.12	88.70%
990 000	0.00	0.00	0.00	0.00	0.00%
	713,530.00	20,108.91	36,144.81	677,385.19	94.93%
	TOTAL OPERATING EXPENDITURES				
895 AIRPORT TOTAL DEPARTMENT	798,530.00	28,692.24	61,894.80	736,635.20	92.25%
295 AIRPORT FUND TOTAL FUND	798,530.00	28,692.24	61,894.80	736,635.20	92.25%

ACCUMULATED PAID LIST
 Period Ending 3/2024 Fiscal Period 3 Year 2024

BARRY COUNTY
04/01/2024

Invoice #	Inv. Date	Account Number	Description	Invoice Amount	Check Number	Check Date
295 AIRPORT FUND						
895 AIRPORT						
295-895-708-000						
041972			NOTEBOOM CONSTRUCTION & MANAGEMENT MARCH 24 03/05/2024 295-895-708-000			
			AIRPORT/MANAGER/TRAINING	\$8,583.33	341628	03/07/2024
			ACCOUNT TOTAL	8,583.33		
			DEPARTMENT TOTAL	\$8,583.33		
046128			AIRNAV, LLC 2026392 03/25/2024 295-895-807-000	\$51.00	342006	03/28/2024
			AIRPORT/RENEWAL/UNTIL 3/10/25			
			ACCOUNT TOTAL	\$51.00		
			DEPARTMENT TOTAL	\$51.00		
056933			TRUESTREAM, BILL PAYMENT CENTER 4/1-30/24 03/05/2024 295-895-851-000	\$124.99	341657	03/07/2024
			AIRPORT/1351022			
			ACCOUNT TOTAL	124.99		
			DEPARTMENT TOTAL	\$124.99		
013811			GENERAL AGENCY COMPANY 9422 03/05/2024 295-895-910-000	\$1,049.95	341605	03/07/2024
			AIRPORT/RENEWAL/STP417376			
			ACCOUNT TOTAL	1,049.95		
			DEPARTMENT TOTAL	\$1,049.95		
008300			CONSUMERS ENERGY, PAYMENT CENTER 2699200113 03/12/2024 295-895-921-000	\$28.78	341755	03/14/2024
008300			CONSUMERS ENERGY, PAYMENT CENTER 2966158780 03/12/2024 295-895-921-000	\$79.93	341755	03/14/2024
014546			GREAT LAKES ENERGY 2/10-3/10/24 03/18/2024 295-895-921-000	\$926.76	341866	03/21/2024
			ACCOUNT TOTAL	1,035.47		
			DEPARTMENT TOTAL	\$1,035.47		
051099			JIM'S PICKUP SERVICE MARCH 24 03/12/2024 295-895-925-000	\$55.00	341777	03/14/2024
			AIRPORT/TRASH/JCOM0050			
			ACCOUNT TOTAL	\$55.00		
			DEPARTMENT TOTAL	\$55.00		
041972			NOTEBOOM CONSTRUCTION & MANAGEMENT 3/11/24 03/12/2024 295-895-931-000	\$67.71	341790	03/14/2024
			AIRPORT/REIMBURSE/MENARDS/SUI			
			ACCOUNT TOTAL	67.71		
			DEPARTMENT TOTAL	\$67.71		
053152			J. RANCK ELECTRIC INC. 116653 03/05/2024 295-895-932-000	\$1,520.00	341616	03/07/2024
			AIRPORT/PAPI PARTS & INSTALLATIC			
			ACCOUNT TOTAL	1,520.00		
			DEPARTMENT TOTAL	\$1,520.00		
046076			AVFUEL CORP. 020105307 03/04/2024 295-895-979-010	\$6,892.76	341570	03/07/2024
046076			AVFUEL CORP. 020243867 03/27/2024 295-895-979-010	\$8,237.12	342007	03/28/2024
			ACCOUNT TOTAL	15,129.88		
			DEPARTMENT TOTAL	\$15,129.88		

ACCUMULATED PAID LIST
Period Ending 3/2024 Fiscal Period 3 Year 2024

BARRY COUNTY
04/01/2024

Invoice #	Inv. Date	Account Number	Description	FUND TOTAL	Invoice Amount	Check Number	Check Date
				FUND TOTAL	\$27,617.33		

Add Sales Tax	\$ 478.13
Add Bank/Credit Card Fees	\$ <u>596.78</u>

TOTAL	\$28,692.24
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**AMENDED AND RESTATED HASTINGS CITY / BARRY COUNTY AIRPORT
CONTRACT FOR AIRPORT MANAGEMENT SERVICE**

This Amended and Restated Hastings City / Barry County Airport Contract for Airport Management Service (the "Contract") is made this 24th day of March, 2021, by and between the HASTINGS CITY / BARRY COUNTY AIRPORT COMMISSION ("Commission") of 2505 Murphy Dr., Hastings, MI 49058, and Mark Noteboom, operating as a sole proprietorship with an address of 7772 E. State Rd., Nashville, MI 49073 ("Contractor").

WHEREAS, the Commission operates the Hastings City / Barry County Airport located at 2505 Murphy Drive, Hastings, MI 49058;

WHEREAS, as required by the FAA, the Commission has contracted with an airport manager, which duties and responsibilities include managing the Airport operations, assistance in the development of goals, objectives, and priorities of the Airport as overseen by the Commission, and provides for compliance with all local, state, and federal regulations which pertain to the Airport;

WHEREAS, the Commission has reviewed alternatives for operating and developing the Airport, and determined that, in light of the Commission's available time and expertise, the Commission continues to benefit from engaging the Contractor, who is a licensed general contractor who has significant experience in the airport management business, as a licensed airport manager on an independent basis, and the Commission seeks the benefits of the results of Contractor's efforts as airport manager, but the conduct and control of such efforts is intended to be entirely within the Contractor's discretion;

WHEREAS, the parties previously entered into the Hastings City / Barry County Airport Contract for Airport Management Service whereby the Contractor served as airport manager of the Airport and provided other services to the Commission in order to manage and operate the Airport;

WHEREAS, the parties desire to continue their relationship and to further provide for the Contractor's autonomy in the provision of the services contemplated by this Contract and to ensure that the Contractor is treated as an independent contractor for purposes of local, state, and federal Law; and

WHEREAS, parties have negotiated and now mutually desire to enter into this amended and restated Contract, pursuant to which the Contractor shall provide services to manage and operate the Airport as an independent contractor.

NOW THEREFORE, in consideration of the negotiated contract and understanding of articles set below, IT IS HEREBY AGREED as follows:

ARTICLE 1: DEFINITIONS

1.1 Airport. The term Airport means the Hastings City / Barry County Airport located at 2505 Murphy Drive, Hastings, MI 49058, and all ancillary property associated therewith owned or managed by the Commission.

1.2 Agent. The term Agent shall mean any individual, person, or other entity that is acting for the benefit of or on behalf of another individual, person, or other entity including either of the parties to this Contract.

1.3 Approved Budget. The term Approved Budget shall mean the Budget approved by the Commission on an annual basis.

1.4 Capital Expenditure or Capital Improvement. The terms Capital Expenditure or Capital Improvement shall mean an item that will be of a long-term nature having a useful life in excess of three years, as defined by manufacturers' specifications, replacements of equipment that has met or exceeded its useful life, and items for construction, placement of new facilities, and capital purchases that significantly improve operations and / or maintenance, aesthetics, long-term capital conditions, or other aspects not generally associated with ongoing operations and maintenance.

1.5 City. The term City means the City of Hastings, in Michigan.

1.6 Commission. The term Commission means the commission established pursuant to the terms of the Joint Operation Agreement to jointly operate the Airport.

1.7 Confidential Information. The term Confidential Information means information not otherwise publically available that is received or obtained by the Contractor in the course of its services to the Commission regarding the Airport and / or the Commission concerning its plans, finances, properties, current and future projects, and the like.

1.8 Conflict of Interest. The term Conflict of Interest means any investment, arrangement, relationship, contract, agreement, other association by the Contractor or a Contractor's Agent which involves the provision or receipt of any goods, remuneration, technical assistance, or other services at or from the Airport or the Commission, either directly or indirectly, except to the extent such is within the scope of the ordinary course of business and relates to such goods, technical assistance, or other services that are available to the general public at large at the same price and on the same terms as those that apply to the Contractor unless such dealings in the ordinary course would cause the Commission, City, or County to violate the requirements of any applicable federal, state, or local Law or ordinance. Notwithstanding the foregoing, the term Conflict of Interest shall not mean any investment, arrangement, relationship, contract, agreement, or other association by the Contractor or the Contractor's Agent that is disclosed to the Commission and approved by the Commission in writing.

1.9 County Board of Commissioners. The term County Board of Commissioners means the board of commissioners governing body for the County.

1.10 Council. The term Council means the city council for the City of Hastings, in Michigan.

1.11 County. The term County means Barry County, in Michigan.

1.12 DEQ. The term DEQ means the Michigan Department of Environmental Quality, or its successor or any comparable federal agency.

- 1.13 Effective Date. The term Effective Date means June 1, 2021.
- 1.14 FAA. The term FAA means the Federal Aviation Administration, or any successor agency.
- 1.15 FCC. The term FCC means the Federal Communications Commission, or any successor agency.
- 1.16 Five Year Plan. The term Five Year Plan means the five (5) year plan established by the airport manager of the Airport and the Commission for the Airport, and approved by the Commission from time to time.
- 1.17 Joint Operating Agreement. The term Joint Operating Agreement means the Agreement for Joint Operation of the Hastings City – Barry County Airport, dated December 30, 1977, as such agreement may be amended and restated from time to time.
- 1.18 Law. The term Law means any federal, state, provincial, local, municipal, foreign, international, or multinational constitution, law, ordinance, bylaw, principle of common law, regulation, rule, statute, or treaty, ruling, order, judgment, injunction, award, decree, or other requirement.
- 1.19 Licensed Premises. The term Licensed Premises means the Airport.
- 1.20 MDOT. The term MDOT means the Michigan Department of Transportation, or any successor or comparable federal agency.
- 1.21 OSHA. The term OSHA means the Occupational Safety and Health Act of 1970, and all comparable local, state, and federal Laws, including the Michigan Occupational Safety and Health Act.
- 1.22 Operating Expenses. The term Operating Expenses shall mean those expenses described in Section 4.1 of this Contract, and such term shall exclude Capital Expenditures and Capital Improvements.

ARTICLE 2: TERM

- 2.1 Term. The initial term of this Contract shall commence on the Effective Date and continue for three (3) calendar years, expiring at 12:01 a.m. on June 1, 2024
- 2.2 Extensions. Following the initial term of this Contract as set forth in Section 2.1, the Contract may be extended by mutual written agreement of the parties for up to four (4) additional three (3) year terms, such that all other provisions of this Agreement shall remain in full force in effect during such extended term, subject however, to the termination rights set forth in Section 2.3 and 2.4 of this Contract. However, at the time of each renewal, the Commission shall seek additional applications for the position of Airport manager, and evaluate alternative arrangements and candidates prior to renewal, and the Commission shall have no obligation to enter into a renewal under this Section 2.2 except in accordance with its discretion.

2.3 Early Termination by the Commission. In the event that the Contractor shall fail to perform any material obligation hereunder, the Commission may give the Contractor written notice specifying such failure and if any such failure shall continue for thirty (30) calendar days after receipt of such notice by the Contractor, and is not cured within the applicable time period, the Commission may terminate this Contract without penalty and Contractor shall have no further right to payment under the terms of this Contract. Notwithstanding the foregoing,

- (a) if the failure of the Contractor constitutes an imminent, serious threat to the continued health, safety, or welfare of any persons or persons using the Airport, including personnel;
- (b) if the Commission's right to operate the Airport or the Contractor's right to serve as Airport manager is terminated by any federal, state, or local government, directly or indirectly;
- (c) if the operation of the Airport becomes economically or operationally unfeasible;
- (d) if the Contractor has a Conflict of Interest with the Commission that is not resolved via good faith negotiation of the parties after thirty (30) calendar days;
- (e) if any action of the Contractor causes or reasonably is anticipated to cause the Commission, City, or County to violate the requirements of the Commission's grant agreement with the FAA or MDOT, any applicable federal, state, or local Law or ordinance; or
- (f) if the Airport is taken or appropriated by any lawful U.S. governmental authority;

then the Commission shall have the right to terminate the Contract effective immediately and the Contractor shall have no further right to payment pursuant to the terms of this Contract.

2.4 Early Termination by the Contractor. The Contractor may, upon written notice to the Commission, terminate this Contract before the end of its term under any of the following circumstances:

- (a) If the Commission fails to make any payments required under this Agreement and fails to cure such failure within sixty (60) days after written notice from the Contractor;
- (b) Upon ninety (90) days written notification; and
- (c) Notwithstanding the foregoing, if a failure of the Commission constitutes an imminent, serious threat to the continued health, safety, or welfare of any persons or persons using the Airport, including personnel, the Contractor shall have the right to terminate the Contract effective immediately.

ARTICLE 3: PARTY RIGHTS AND RESPONSIBILITIES

3.1 Contractor Responsibilities.

- (a) The Commission hereby engages the Contractor and Contractor hereby agrees to serve as the manager of the Airport, on the terms set forth in this Contract, and

Contractor hereby also agrees to provide the Airport manager and other related services as set forth on the attached Exhibit A. As such, during the term of this

Contract, the Contractor shall have the sole and exclusive right to serve as the Commission's Airport manager, and shall provide safe, timely, and professional management of the Airport in a business-like manner and in accordance with this Contract. The Commission shall allow the Contractor, as manager, to manage the Airport as a commercial enterprise to the extent permitted by and in compliance with federal, state, or local Law, using best practices based on Contractor's collective experience and knowledge from other airport operations and the aviation industry in general.

3.2 Commission Responsibilities.

(a) Although the Contractor, as the designated manager of the Airport, shall be responsible for managing and running the Airport, the Commission shall retain the following rights with respect to the Airport:

(1) The Commission shall retain ownership of the Airport, and all ancillary property related thereto including all Airport facilities and equipment and other personal property and vehicles;

(2) The Commission shall have sole authority to approve and sign all rental and lease agreements with respect to Airport property;

(3) The Commission shall have sole authority to approve and sign all legal documents with respect to the property of the Airport, and for other actions that may not be delegated to an independent contractor in connection with the operation of an Airport but only to the extent necessary for compliance purposes with federal, state, and local Law;

(4) The Commission, and to the extent required pursuant to the terms of the Joint Operating Agreement and /or the terms of any purchasing policy of the County Board of Commissioners or the Council shall have the right to approve an annual Budget for Airport Operating Expenses;

(5) The Commission, and to the extent required pursuant to the terms of the Joint Operating Agreement and /or the terms of any purchasing policy of the County Board of Commissioners or the Council shall have the right to approve any Capital Expenditures not otherwise approved pursuant to the terms of the Budget;

(6) The Commission and to the extent required pursuant to the terms of the Joint Operating Agreement and / or the terms of any purchasing policy of the County Board of Commissioners or the Council shall have the right to approve any liability or obligation of the Airport not otherwise approved pursuant to the terms of the Budget;

(7) The Council, the County Board of Commissioners, or Commission, as applicable, shall approve any utilization of the Airport or the assets of the Airport for any purpose other than the continued operation of the Airport;

(8) The Council, the County Board of Commissioners, or Commission, as applicable, shall approve any disposition, transfer, conveyance, pledge, mortgage, encumbrance, or other lien imposed on the Airport;

(9) The Commission shall have the right to establish Airport policies, plans, budgets, and to set fees and rates with respect to the Airport business;

(10) The Commission shall have the right to approve the Five Year Plan, and as required for legal compliance under the FAA, MDOT, and applicable Law;

(11) The Commission shall take all reasonable actions necessary to ensure that Contractor is not hampered by any Airport personnel in Contractor's efforts to implement operating, safety, and environmental plans for the Airport in accordance with all applicable federal, state, and local Laws;

(12) The Commission shall be responsible for auditing the financial practices of the Airport, in accordance with its standard practice and applicable Law, and all such audit expenses shall be included within the definition of Operating Expenses for purposes of this Contract; and

(13) The Commission shall retain responsibility and control of community relations for the Airport.

(b) Notwithstanding the foregoing, nothing in this Contract shall prevent the Commission from granting the Contractor, as Airport manager, broad day-to-day control and management of the Airport, and the Commission, the City Council, and the County Board of Commissioners shall not have any other right to control the Contractor in the performance of the duties set forth in this Contract. The parameters of manager's control and management of the Airport shall be limited in this regard only as set forth in this Contract and by applicable Law;

(c) It is understood and agreed that in the event the Commission is dissatisfied with any action or performance by Contractor, the Commission shall not unreasonably intrude into the Contractor's role as manager or into its relationship with its employees or Agents but rather shall timely transmit such dissatisfaction to Contractor directly and shall thereafter work with such Contractor and such other Contractor representatives as may be appropriate to resolve such issues.

3.3 Commission Designee. The Commission may designate an individual who shall serve as the Commission's liaison with the Contractor, including for purposes of disclosure of any Conflict of Interest pursuant to Section 6.5, and who may be designated as the authorized person for purposes executing any of the documents or legal agreements contemplated in Section 3.2(b) and (c) above. Unless the Commission notifies the Contractor of a different Commission Designee in a signed writing delivered to the Contractor, the Commission's Designee shall be the Commission Chairperson. The Contractor shall keep the Commission Designee informed of significant developments affecting the Airport, and the Contractor may rely on written statements and representations of the Commission's Designee.

ARTICLE 4: AIRPORT PREMISES & EXPENSES

4.1 Airport Operation Remuneration & Expense Procedures.

- (a) To the extent that any billing statements, fees, or expenses for the Airport are submitted to the Contractor rather than the Commission directly, the Contractor shall submit on at least a monthly basis (or on a more frequent basis if required by third party billing procedures) the full amount of Operating Expenses, Capital Expenditures, and any other expenses and fees to which the Airport is or may be subject directly to the Commission. The Contractor shall not handle funds, revenues, income, and remuneration generated by the Airport or the Commission on behalf of the Commission, and shall require all third parties to submit any and all funds, revenues, income, and remuneration generated by the Airport or the Commission directly to the Commission, or a party designated as the recipient for such funds by the Commission in writing.
- (b) The Commission shall be obligated to pay on a monthly basis the full amount of the Operating Expenses approved in the Approved Budget, and except as otherwise provided herein, the Contractor shall have no liability for such expenses. In addition, the Commission shall be responsible for paying the cost of any approved Capital Expenditures or Capital Improvements undertaken at or in connection with the Airport. Operating Expenses means all expenses incurred in the operation of the Airport for maintenance, administration, and ordinary repairs, and shall include, as applicable:
- (1) Legal, accounting, and other consultant fees incurred by the Commission in connection with its ownership and operation of the Airport;
 - (2) Expenses related to Airport equipment and facility repair and maintenance, including those cleaning, toiletry, office, and other supplies customarily used or consumed at or by the Airport by or for its customers or employees;
 - (3) Labor costs, consisting of wages and salaries, for Airport employees, who are not Agents or employees of the Contractor assisting the Contractor with the performance of the Contractor's services, if any, together with associated payroll and other administrative expenses actually incurred and / or paid relating to such wages and salaries, including but not limited to payroll taxes, severance pay, workers compensation, fringe benefits, etc.;
 - (4) Insurance costs for Airport / commercial general liability insurance, and any umbrella liability, property insurance, comprehensive automobile, environmental liability, and workers compensation insurance, except to the extent the Contractor is added as an additional insured, in which case such additional cost shall be paid by the Contractor;
 - (5) Maintenance expenses and the costs for replacement parts for the Fuel Farms located on the Airport field;

- (6) Electric expenses for the Airport;
- (7) Heating expenses for the Airport;
- (8) Water and sewer expenses for the Airport; and
- (9) Telephone, cable, and internet services for the Airport.

4.2 Contractor's Airport Management Expenses. Except as set forth in Section 4.1 above because such expenses are not Contractor's expenses, but are more properly classified as Airport Operating Expenses or Capital Expenditures, or as agreed by the Commission and the Contractor in a separate signed writing, Contractor shall be responsible for the payment of all of the expenses, including the Contractor's expenses associated with the provision of the services contemplated by this Contract, the provision of all labor required for performance of the Services, and for the cost of obtaining and maintaining any and all equipment and / or supplies necessary to perform the Services. The Commission will not reimburse or otherwise pay Contractor any amounts for any such expenses, equipment, or supplies, it being acknowledged that the Commission's only payment obligation to Contractor is as set forth in Section 5. For example, Contractor's expenses may include, by way of illustration and not limitation:

- (a) All labor costs, consisting of wages and salaries, for Contractor agents and employees, together with associated payroll and other administrative expenses actually incurred and / or paid relating to such wages and salaries, including but not limited to payroll taxes, severance pay, workers compensation, fringe benefits, etc.;
- (b) Manager insurance, including employee practices liability insurance, crime insurance, and fiduciary liability;
- (c) Other insurance that Contractor desires to obtain in its discretion, or is required to obtain by the Commission, if available, relating to the performance by Contractor of services hereunder;
- (d) Legal, accounting, and other consultant fees incurred directly by the Contractor in performance of Contractor's services;
- (e) Expenses to obtain, repair, or maintain Contractor's property, including for recordkeeping, inspection, grounds-keeping, and cleaning tools and equipment like computers, lawnmowers, ladders, hand tools, vehicles, etc., and lease or rental, maintenance, and repair expenses related thereto;
- (f) Expenses related to consumable supplies necessary to complete the Contractor's services, including cleaning supplies, garbage bags, and expenses for fuel and other energy costs incurred by Contractor in connection with the performance of the Contractor's services.

4.3 Limited License to Enter and Use Airport Facility. Except as otherwise provided in this Contract, the Contractor shall have a limited license to enter and use the Licensed Premises during the term of this Contract for the purpose of performing the services and fulfilling its obligations under this Contract. The Contractor shall use reasonable care in

use of the Licensed Premises, including Airport and its facilities, improvements, equipment; and other personal property belonging to the Commission.

4.4 Contractor Equipment. Contractor shall be responsible for providing all equipment and materials necessary to provide the Contractor's services contemplated by this Contract, Contractor hereby represents and warrants that Contractor shall fully comply with the requirements of OSHA and applicable Law with respect to any equipment used on the Licensed Premises, and the Contractor agrees to accept all responsibility to insure the proper safety, set-up, erection, inspection, use, and or maintenance of such equipment prior to use.

4.5 Surrender. At the expiration or termination of this Agreement, the Contractor shall vacate the Licensed Premises, leaving it in as good condition as it now is, ordinary wear and tear expected, and shall return (or completely destroy with respect to electronically maintained information that cannot be returned) all Confidential Information and / or Commission documents that may be in Contractor's possession.

4.6 Books and Records. The Commission, at all times, shall have reasonable access to the books and records maintained by the Contractor in connection with the Contractor's duties at the Airport pursuant to the terms of this Contract, and at termination of this Contract, shall provide the Commission with a copy of such books and records, if reasonably requested by the Commission in writing, at the Contractor's sole expense.

ARTICLE 5: COMPENSATION AND FEES

5.1 Negotiated Compensation: The Commission shall pay the negotiated fee for the Contractor's services for this agreement, as follows:

- (a) Contractor Services shall be paid by the Commission to the Contractor, in a yearly equivalent fee of seventy-nine thousand dollars (\$79,000.00). Payments shall be paid in monthly installments as negotiated between both parties.

ARTICLE 6: STATUS OF CONTRACTOR AND SERVICE CONDITIONS

6.1 Independent Contractor.

- (a) Contractor shall be an independent contractor and nothing in this Contract shall cause Contractor to be treated as an employee, agent, or partner of Commission or to be considered eligible for any benefits provided by Commission to its employees.
- (b) Contractor shall not be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by Commission to its employees, and Commission will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes, making any

insurance contributions, including for unemployment or disability, or obtaining worker's compensation insurance on behalf of Contractor or its employees.

- (c) Contractor acknowledges that the Commission seeks the benefits of the results of the Contractor's services as manager of the Airport hereunder, but the conduct and control of such services are solely within the Contractor's discretion.

6.2 No Authority to Bind Commission. Contractor lacks the express or implied authority and is not granted any right or authority to assume or create any obligation or liability, express or implied, on behalf of Commission or to bind Commission in any manner whatsoever.

6.3 Taxes and Standards Related to Contractor's Services. Contractor shall bear full responsibility to withhold and pay any and all taxes related to the services provided to Commission. Contractor agrees that all services shall be performed in accordance with the requirements of this Contract and in accordance with the highest prevailing standards for work of the type undertaken, and in accordance with all applicable federal, state, local, provincial, or municipal Laws and regulations.

6.4 Contractor's Other Operations. The Contractor warrants that it will carry out its obligations under this Contract solely in the best interests of the Commission, but the Parties recognize that during the Term, the Contractor may have obligations to other jobs, projects, investments, or operations, including but not limited to the provision of services as airport manager to other airport operators and to entities operating at other airports.

6.5 Conflict of Interest Disclosure. The Contractor shall not engage any Conflict of Interest either directly or indirectly, that is not specifically authorized by this Contract or otherwise approved by the Commission without first disclosing such to the Commission.

6.6 Contractor's Use of Agents or Employees. The Contractor has the right to employ or engage persons, in its sole discretion, to assist it in connection of the performance of this Contract. Any persons employed or engaged by Contractor in connection with the performance of this Contract shall be Contractor's employees and Contractor shall be fully responsible for them, including for purposes of payroll tax withholding, employee benefits, worker's compensation insurance, and indemnify and hold the Commission harmless against any claims made by or on behalf of any such employee or contractor against the Commission or the Airport.

6.7 Contractor and Employee Certifications. Contractor shall at its sole expense assure that it and its employees and Agents obtain and maintain all certifications, registrations, licenses, and other approvals required to perform the Contractor's services under this Contract.

6.8 Enforcement of Contract Terms. The Contractor shall require and enforce against any employee or other Agent that it engages in connection with the performance of this Contract whether at the Airport or elsewhere in the Contractor's system all obligations under this Contract that apply to Contractor, including the compliance with the Law.

6.9 Non-Discrimination. Contractor, in the operation and use of the Licensed Premises, including the property and facilities of the Airport shall not, on the grounds of race, color, national origins, sex, or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by applicable Law and, if applicable, shall abide by the provisions of Part 21 of the Rules and Regulations of the Office of the Secretary of Transportation (49 CFR Part 21), effectuating Title VI of the Civil Rights Acts of 1964 and the Americans With Disabilities Act of 1990.

6.10 Nondiscrimination Under Michigan Law. Contractor agrees for itself and its subcontractors not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status or because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of this covenant shall be regarded as a material breach of this Contract (MCL 37.1209; MCL 37.2209).

ARTICLE 7: GENERAL CONDITIONS

7.1 Compliance. Contractor will at all times act in compliance with all applicable Laws and regulations, as well as Commission rules of conduct, whether now existing or hereinafter enacted, whenever on Airport premises or otherwise in connection with performance of the services.

7.2 Confidential Information. Contractor and the Commission may be provided access to confidential information about the other party. Each party hereby agrees that they will not use or disclose to any third party any Confidential Information, either during or following the term of this Agreement, except as authorized by the Commission, as required by applicable Law, or in connection with Contractor's performance of the services pursuant to the terms of this Contract. In the event Contractor or the Commission is judicially determined to have breached this obligation in any legal action to enforce the Commission's rights under this Contract, the other party shall be entitled to recover, in addition to any damages, its attorneys' fees and costs incurred in enforcing its rights under the Contract. Notwithstanding the foregoing or anything else in this Contract, the Contractor agrees that nothing in this Contract shall prevent the Commission, Council, or County Board of Commissioners from disclosing information related to the Contractor or this Contract as may be lawfully ordered by a court of competent jurisdiction, pursuant to government agency subpoena, or as otherwise required by the Freedom of Information Act, Act No. 442 of Public Acts of 1976 ("FOIA") or from complying with the Open Meetings Act, and instructing third party consultants to keep the terms of this Agreement confidential.

7.3 Non-Exclusive. Nothing in this Agreement shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Commission reserves the right to grant to others the privilege and right of conducting any one or more of the aeronautical activities listed in this Agreement, or any other activity of an aeronautical nature.

7.4 Rules. the Contractor agrees that the Commission has the right to adopt and enforce reasonable rules and regulations and that the Contractor and all of its employees, agents, and servants will faithfully observe and comply with all rules and regulations to the extent necessary to comply with the applicable Law.

7.5 Disposition by Commission. The Commission reserves the right to sell, lease, and license or otherwise dispose of any Airport lands for any purposes whatsoever and to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of the Contractor and without interference or hindrance from the Contractor.

7.6 Protection of Aerial Approaches. The Commission reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, and further reserves the right to prevent the Contractor from erecting or permitting to be erected any building or other structure on the Airport, which in the opinion of the Commission, would limit the usefulness of the Airport or constitute a hazard to aircraft.

7.7 Military Use. The Commission shall have the right to enter into an agreement with the United States Government or the State of Michigan for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and / or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with such Government, shall be suspended.

7.8 Governmental Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreement between the Commission and the State of Michigan and United States relative to the maintenance, operation, or development of the Airport.

7.9 Public Use. The Airport is a public airport and the Contractor shall not be held liable legally or financially for any actions or misuse of the Airport or its property by individuals or companies not employed by, under the control of, or authorized by the Contractor.

7.10 Subordination to Commission's Federal Obligations. This Contract shall be subordinate to the provisions of and requirements of any existing or future agreement between Commission and the United States relative to the development, operation, or maintenance of the Airport.

ARTICLE 8: INDEMNIFICATION AND INSURANCE

8.1 Indemnification. The Contractor shall hold the Commission, the County of Barry, the City of Hastings, and their respective representatives and officials harmless from, indemnify it (with legal counsel reasonably acceptable to the Commission) for, and fully indemnify, and defend it against, any claim, award, judgment, damages, liability, expenses, or cost or losses of any kind or nature whatsoever (including attorney's fees) arising out of or resulting from the activities of or any failure to act of the Contractor or in connection with or related to providing the manager or other services to the Commission pursuant to this Contract, including for negligence. The Contractor is not obligated to indemnify the Commission in any manner for the Commission's

own negligence or willful misconduct. As used in this provision, the terms "Commission" and "Contractor" include their respective officers, employees, and other Agents.

8.2 Survival. This Section 8 shall survive the expiration or termination of this Contract.

ARTICLE 9: MISCELLANEOUS

9.1 Notice. Any notice or other communication required or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by pre-paid certified mail, return receipt requested, to the addresses first written above, or delivered to the contact persons for either party.

9.2 Assignment; Binding Effect. This Contract may not be assigned by the Contractor without the prior written consent of the Commission. This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, and their respective permitted successor and assigns.

9.3 Captions. The captions appearing at the beginning of each section or subsection are provided for convenience only; they shall not be deemed a part of this Agreement, nor shall they have any independent significance.

9.4 Waiver of Breach. Neither party's waiver of a breach of any provision of the Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or another provision.

9.5 Entire Agreement. This Contract supersedes all previous or contemporaneous contracts between the parties relating to its subject matter. No other oral statements or prior or contemporaneous written material not specifically incorporated in the Agreement shall have any effect and no changes or additions to this Contract shall be effective unless made in writing and signed by the parties. In entering into this Contract, the Parties are relying solely upon the representations and agreements in this Contract and no others.

9.6 Amendments. This Contract cannot be altered or amended except pursuant to an instrument in writing signed by all of the parties hereto.

9.7 Enforcement. If either party takes legal action to enforce this Contract, the prevailing party shall, in addition to any other relief, be entitled to recover its actual, reasonable costs of such action, including, without limitation, actual, reasonable attorneys' fees, filing fees, expert fees, discovery costs, and other legal expenses incurred to investigate, bring, maintain, or defend any such action from its first accrual or first notice thereof through any appellate and collection proceedings.

9.8 Counterparts; Facsimile/PDF Signatures. This Contract may be executed in multiple separate counterparts, each of which shall be deemed to be an original, and all such separate counterparts shall constitute but one instrument. Signatures of the parties transmitted by facsimile, portable document format (PDF) or other electronic means shall be deemed to be their original signatures for all legal and other purposes.

9.9 Governing Law & Venue. This Contract shall be governed by and interpreted according to the laws of the State of Michigan, excluding choice of law principles. Contractor acknowledges and consents to venue in of the courts of Barry County, Michigan and the federal courts of the Western District of Michigan, if applicable.

The parties have executed this Agreement as of the date first written above.

HASTINGS CITY / BARRY COUNTY
AIRPORT COMMISSION

AIRPORT MANAGER

By:

Ronald E. Holley
Ronald Holley, Chair

By:

Mark Noteboom
Mark Noteboom

By:

Walter Stouffer
Witness

By:

Walter Stouffer
Witness

Date:

3-29-21

Date:

3-29-21

EXHIBIT A CONTRACTOR'S SERVICES

1.1 Airport Manager Services. The Contractor shall provide the following services:

- (a) Perform the duties of Airport Manager as defined and required under the directives of the MDOT and the FAA and any other Laws, regulations, orders, or directives of governmental agencies of competent jurisdiction as necessary in order for the Airport to be a compliant and functioning airport;
- (b) In accordance with all applicable Law and legal requirements, operate and maintain the Airport as required for general aviation airports and assure that all services required of such an airport are provided in order for the Airport to be a functioning Airport;
- (c) Prepare, compile, and maintain in an orderly manner consistent with legal requirements, including the FAA, FCC, MDOT, and DEQ, and Commission policies, all Airport records and such Airport-related records as are required by other governmental agencies of competent jurisdiction, including, without limitation, all purchasing and other financial records and have them available to federal, state, and Commission officials for review, use, reference, copying, etc.;
- (d) Ensure compliance in all material respects with applicable Law, the terms, conditions, and obligations of the FAA grant assurance agreements and this Contract;
- (e) Comply with and enforce all rules, regulations, and policies applicable to the Airport including, without limitation, the Hastings City / Barry County Airport Commission Rules and Regulations;
- (f) Coordinate and manage immediate responses to any emergencies or natural disasters affecting the Airport in compliance with all rules, regulations, and policies applicable to the Airport;
- (g) Regularly inspect Airport facilities to observe, correct when possible, then report to the Commission, City Council, and County Board of Commissioners, as applicable, and negotiate for repairs, including with respect to the condition of runway and taxiways, lights, and rotating beacons, FAA equipment, radio facilities, the airfield, and fuel pumps;
- (h) Inspect all buildings as necessary on a regular basis in compliance with applicable Law;
- (i) Accept and document complaints and disputes between or among Airport users and attempt to address or resolve disputes if related to Contractor's duties under this Contract, or otherwise, promptly refer to the Commission; address and resolve disputes between or among Airport users with respect to use or operation of the Airport;
- (j) Keep the passenger waiting area of the Administration Building accessible for aviators and general public according to FAA regulations based on designated (Airport class);

- (k) Operate, regularly inspect, maintain, and repair the Airport lighting system;
- (l) Take all actions reasonably required of an Airport Manager in order to fully implement the annual Airport budgets, including any amendments to budgets which may from time to time be approved by the Commission;
- (m) Obtain, maintain, and appropriately display all required licenses, certificates, registrations, etc., for the Airport, the Airport Manager, and Assistant Airport Manager;
- (n) Provide monitoring and record keeping as required for operation of the fuel system in accordance with the requirements of all regulatory agencies. Monitor and maintain an adequate inventory of fuel in the fuel system of a grade and quality meeting industry standards and Airport Commission requirements. Order fuel as necessary to maintain inventory. Coordinate maintenance of the fuel system as required;
- (o) Facilitate and provide assistance with fuel sales from the fuel storage facility owned by the Airport;
- (p) Assure that, during Airport hours of operation as provided by the Commission and applicable Law, that an appropriate certified and credentialed airport manager or designated assistant manager, who is appointed by the Contractor and authorized to make decisions binding on the Contractor, is either on the Airport premises, or is on-call and available to respond to the premises within one hour of notification;
- (q) Submit a general report to the Airport Commission, County Commission, or Hastings City Council on the status of the Airport for their review if requested, including the following:
 - (1) Status of hangar rentals;
 - (2) Numbers of aircraft actually based at the Airport;
 - (3) Any crimes, fires, storm damage, or similar issues experienced at the Airport;
 - (4) Total gallons of fuel sold;
 - (5) Any required fuel logs or other information;
 - (6) Details about any special uses of the Airport;
 - (7) Details of any disputes or disagreements with any Airport user;
 - (8) Any other information that is requested that pertains to the Airport's wellbeing.
- (r) Ensure that an appropriately credentialed and certified airport manager, who is appointed by the Contractor and authorized to make decisions binding on the Contractor, attend Commission, Council, County Board of Commissioner meetings as such may be required to be held per the terms of the Joint Operating Agreement or the governing documents and Law of the County or City;

- (s) Notify the Commission of any communications from state or federal officials regarding the Airport except to the extent such communications occur in the ordinary course of business and solely relate to matters within the Contractor's discretion pursuant to the terms of this Contract as and as Airport Manager, and, if requested, make a complete written report on such contact. The Contractor shall make no representations or promises and take no actions with respect to state or federal agencies without the Commission's, or representatives', prior knowledge and consent.
- 1.2 Qualifications. The Contractor shall, at its sole expense, assure that it and its employees and agents obtain and maintain all certifications, registrations, licenses, and other approvals required to perform the Contractor's Services under this Agreement.
- 1.3 Lease Compliance. The Contractor shall coordinate hangar showings and the hangar leasing process including but not limited to maintaining a waiting list of interested potential hanger lessors. The Contractor shall administer and enforce compliance with all leases relating to the Airport facilities and shall inform and direct lessees with respect to their rental and fee payment obligations to the Commission, provided, however, only the Commission shall have the right and authority to authorize the commencement of any legal action or arbitration under any such lease. Such rents and fees shall include but not be limited to hangar rents, tie down fees, etc. The Contractor shall keep the documents necessary to verify rent payment, status of renter, etc. In addition, the Contractor shall have no right to enter into or to bind the Commission in any lease, license agreement, or use agreement without the specific written authorization of the Commission but may initiate the negotiation and preparation of such agreements as Agent for the Commission.
- 1.4 Maintenance and Property Management Services. The Contractor agrees to perform the following maintenance and property management services for the Airport grounds and buildings:
- (a) Provide access to the Terminal Building for visitors to the Airport outlined by the FAA class of Airport;
 - (b) The Contractor must maintain the Airport to FAA and MDOT regulations as a (general utility airport), and this includes but is not limited to grounds-keeping, light and bulb replacements, refuse collection, navigational hazard removal, and Airport equipment and facilities repair and handy-man services.
 - (c) The Contractor shall, except as otherwise provided in this Contract, at its own expense, provide light cleaning services (i.e., washing, waxing, dusting, mopping, sweeping, trash pickup, etc.), which are necessary to keep the offices in a neat and orderly condition on a daily basis.
- 1.5 Other Services. If the Contractor needs to perform any other duties outside the scope of this Contract, the Contractor and Airport Commission may negotiate

terms for said project, including additional consideration for such performance of additional services, but neither party is under an obligation to do so.

- 1.6 Standard of Contractor Performance. The Contractor hereby acknowledges and agrees that the Contractor's services to be performed pursuant to the terms of this Contract shall be performed in accordance with the standards set forth in this Section 1.6 of Exhibit A of this Contract.
- (a) Contractor shall comply with all applicable Laws, ordinances, rules, and regulations of all governing authorities, including rules and regulations promulgated and modified from time to time by the Commission concerning the operation of the Airport, rules and regulations of the FAA, FCC and other governing authorities, and the Laws of the State of Michigan governing public contracts, the provisions of which are hereby incorporated by this reference. The Contractor shall obtain and maintain all permits or licenses, as may be required by the FAA and MDOT.
- (b) Contractor acknowledges that good public relations are necessary in the proper operation of the Airport and in furthering the public interest served by the Airport. Therefore, Contractor will at all times during this Agreement strive for and develop good public relations and require the same of Contractor Agents and employees in all aspects of its activities under this Contract.

