

Key:

Purple = Commission and Authority

Teal = Authority

Orange = Commission

**ARTICLES OF INCORPORATION
OF
THE NORTHWEST REGIONAL AIRPORT AUTHORITY**

THESE ARTICLES OF INCORPORATION are adopted by the Counties of Leelanau and Grand Traverse, Michigan for the purpose of creating, establishing, and incorporating a Regional Airport Authority under Act 95, Public Acts of Michigan, 2015, as amended.

**AMENDED AND RESTATED OPERATING AGREEMENT
FOR
THE NORTHWEST REGIONAL AIRPORT COMMISSION**

THIS AMENDED AND RESTATED OPERATING AGREEMENT is entered into by Grand Traverse County, Leelanau County and the Northwestern Regional Airport Commission for the purpose of amending and restating the Amended Joint Operating Agreement for the Northwestern Regional Airport Commission.

RECITALS

WHEREAS, Grand Traverse County, Leelanau County, and the Northwestern Regional Airport Commission entered into an Amended Joint Operating Agreement for the Northwestern Regional Airport Commission on February 17, 1999; and

WHEREAS, the Counties and NRAC desire to amend the Joint Operating Agreement to continue the joint operation of the Cherry Capital Airport (Airport) through the Northwestern Regional Airport Commission for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the Airport and Airport facilities under Chapter VII of the Michigan Aeronautics Code;

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE - NAME AND OFFICE

The name of the Authority is the “Northwest Regional Airport Authority,” hereinafter sometimes referred to as the “Authority.” The principal office of the Authority shall be located at 727 Fly Don’t Drive, Traverse City, Michigan 49686.

The name of this Commission is the “Northwest Regional Airport Commission,” hereinafter sometimes referred to as the “Commission.” The principal office of the Commission shall be located at 727 Fly Don’t Drive, Traverse City, Michigan 49686.

ARTICLE - INCORPORATING GOVERNMENTAL UNITS/ PARTIES TO THE AGREEMENT

The incorporating and creating municipal corporations of this Authority are the Counties of Leelanau and Grand Traverse, Michigan (the “Counties”).

The parties to this Agreement are the Counties of Leelanau and Grand Traverse, Michigan (the “Counties”) and the Northwestern Regional Airport Commission (NRAC).

ARTICLE - PURPOSE

The purpose of the Authority is to plan, promote, extend, maintain, acquire, purchase, construct, improve, repair, enlarge, and operate all airports and airport facilities under the operational jurisdiction of or owned by the Authority in accordance with the authorization contained in Act 95, Public Acts of Michigan, 2015, as amended (the “Act”).

The Commission is for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the Airport, landing fields and other aeronautical facilities, and Airport protection privileges under Chapter VII of the Michigan Aeronautics Code.

ARTICLE - POWERS

The Authority shall be a public body corporate with the power to sue or to be sued in any court in the State of Michigan. The Authority shall possess all of the powers now or hereafter granted by the Act, or by any other applicable statute of the State of Michigan and by these Articles, and those powers incident thereto. The enumeration of any powers herein shall not be construed as a limitation upon its general powers unless the context shall clearly indicate

otherwise. The Authority may adopt a corporate seal.

The Commission may exercise, on behalf of Grand Traverse County and Leelanau County all the powers of each granted by the Michigan Aeronautics Code and, except as set forth herein and the Michigan Aeronautics Code, is delegated the authority to exercise all powers set forth therein and herein as an authorized agent of Grand Traverse County and Leelanau County.

ARTICLE - TERM

The Authority/Commission shall continue in existence perpetually or until dissolved by a two-thirds (2/3) vote of the Leelanau and Grand Traverse Board of Commissioners elect or by law; provided, however, that such Authority/Commission shall not be dissolved if such dissolution would operate as an impairment in any respect of any of its contractual obligations.

ARTICLE - DISSOLUTION

Upon dissolution, the Airport Property and the debts, liabilities, and obligations of the Authority shall be transferred to another form of governance then lawfully allowed by statute to operate the Airport under such terms and conditions as the parties may agree. If no agreement as to disposition is reached within six (6) months after dissolution, an advisory board shall be appointed by Grand Traverse County and Leelanau County to recommend the form of governance and the terms and conditions for transfer of the Airport Property and debts, liabilities and obligations of the Commission. The board shall consist of three (3) members appointed by Grand Traverse County and three (3) members appointed by Leelanau County, which shall prepare and recommend to the County Commission of each County a complete plan for the disposition of all property acquired or operated under this Agreement, which plan shall be adopted by Grand Traverse County and Leelanau County unless either County files and action with the 13th Circuit Court seeking a declaration that the plan for disposition is invalid or otherwise not permitted.

ARTICLE - EXPANSION OF COMMISSION

Additional political subdivisions may be permitted to participate herein subject to approval of the existing parties to this Agreement and subject to agreement to assume a share of the costs and expenses of operation and debt retirement, if any, together with such other conditions as may be imposed by the existing parties.

ARTICLE _____ - GOVERNING BOARD

The Authority shall be directed and governed by a Board (the “Board”) consisting of nine (9) members, with three (3) members appointed by the Leelanau County Board of Commissioners and six (6) appointed by the Grand Traverse Board of Commissioners; provided that no more than two (2) members appointed by the Leelanau County Board of Commissioners may be elected officials and no more than two (2) members appointed by the Grand Traverse County Board of Commissioners may be elected officials, and one (1) member appointed by the Grand Traverse County Board of Commissioners shall be a resident outside of both Grand Traverse and Leelanau Counties.

All Board members shall be citizens of the United States and shall have experience in aviation, business, accounting, finance, marketing, engineering, law, real estate, economic development, management, environmental science, or other field of value to the operation of the Authority. Full-time paid County employees are not eligible for appointment to the Board.

The terms of office shall be three (3) years; provided that the initial terms shall be staggered as provided in the Act. A member of the Board shall hold office until the Board member’s successor is appointed and qualified, or until resignation or removal.

In the event a member’s appointing body does not appoint a successor prior to the expiration of the member’s term, the member shall continue in office beyond the ending dates of the term they were appointed for and until such time as may be required for the member’s appointing body to renew a term of appointment for the member or select a different member.

Either County may remove a Board member appointed by them for cause. Cause includes a member ceasing to meet qualifications for appointment, failure to attend at least 70% of the meetings of the Board, each fiscal year, conviction of a felony or crime involving moral turpitude, breach of fiduciary duty to the Authority, having a conflict of interest, being in default to the County, and other conduct as specified in the bylaws of the Authority for which the Board may recommend removal by the County.

The Commission shall be directed and governed by a Commission (the “Commission”) consisting of Seven (7) members, with two (2) members appointed by the Leelanau County Board of Commissioners and five (5) appointed by the Grand Traverse Board of Commissioners.

Each member shall be appointed for a three (3) year term and shall be eligible for

reappointment. Those members currently in office at the time of the execution of this Agreement shall continue in office with no interruption thereof. The terms of office shall continue to expire in a staggered fashion, with no more than three (3) terms of office expiring in any given year. Each term of office shall start on January 1 at 12:00 noon of the same year as the expiration date of the previous term.

In the event a member's appointing body does not appoint a successor prior to the expiration of the member's term, the member shall continue in office beyond the ending dates of the term they were appointed for and until such time as may be required for the member's appointing body to renew a term of appointment for the member or select a different member.

ARTICLE - VACANCY

If a member of the Board/Commission is removed or is unable to complete the term of office, a successor shall be appointed in the same manner as the original appointment to complete the term. In the case of the temporary absence or disability of any officer elected by the Board/Commission, the Board/Commission may appoint another member temporarily to act in that officer's stead except that in the event of the temporary absence or disability of the Chair, the Vice-Chair shall so act and in the event of the temporary absence or disability of the Secretary/Treasurer, the Chief Executive Officer/Chair may appoint another to act in the Treasurer's stead.

ARTICLE - MEETINGS

The Board/Commission shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. The Board/Commission shall meet not less than once per quarter. A special meeting of the Board/Commission may be scheduled as provided in the Board's/Commission's bylaws, but the Chair shall call a special meeting upon request of at least 30% of the members of the Board/Commission.

The Board/Commission shall have the right to adopt rules and bylaws governing its procedure which are not in conflict with the terms of the Act, any statute of the State of Michigan, or of these Articles of Incorporation.

ARTICLE - BOARD AND OFFICER DUTIES

The Board shall annually elect a Chair, a Vice-Chair, a Secretary/Treasurer, and such additional officers of the Board as the Board considers necessary. Such officers shall be

members of the Board. The Chair of the Board shall be the presiding officer. Except as otherwise provided, the Chair shall not have any executive or administrative functions other than as a member of the Board. In the absence or disability of the Chair, the Vice- Chair shall perform the duties of the Chair. The Secretary shall be the recording officer of the Board.

The Board shall appoint a Chief Executive Officer who shall be an ex officio member of the Board without vote and who shall serve at the pleasure of the Board. In addition to the powers conferred upon the Chief Executive Officer by the Act, the Board may delegate in its bylaws such other and further duties as it sees fit. Except for those powers conferred upon the Chief Executive Officer by the Act, the Board may withdraw from the Chief Executive Officer any power that the Board has delegated.

The Chief Executive Officer shall appoint a Chief Financial Officer who shall be the Treasurer of the Authority. The Treasurer shall be custodian of the funds of the Authority. All moneys shall be deposited in a bank or banks, to be designated by the Board.

ARTICLE - EMPLOYMENT OF PERSONNEL

The Commission shall hire an Airport Director, to be selected on the basis of fitness and ability to perform the required and who has training and actual experience in the administration of airports. The Commission may also create such other positions as may from time to time be recommended by the Airport Director. The Airport Director shall attend all meetings of the Commission and shall be responsible to the Commission for the proper and effective operation and management of the Airport and shall serve at the pleasure of the Commission. All personnel shall be employees of the Commission.

ARTICLE - AUDIT COMMITTEE

The Board/Commission shall appoint an audit committee consisting of at least two (2) members of the Board/Commission. The audit committee shall meet not less than annually with the Chief Financial Officer/_____, the Chief Executive Officer/Airport Director, and the independent auditors of the Authority/Commission to review reports related to the financial condition, operations, performance, and management of the Authority/Commission and airport(s). The audit committee, Chief Executive Officer/Airport Director, and Chief Financial Officer/_____ shall prepare an annual report related to the financial condition, operations, performance, and management of the Authority/Commission and airport(s) and present it to the Leelanau and Grand Traverse County Board of Commissioners.

ARTICLE _____ - FISCAL YEAR

The fiscal year of the Authority/Commission shall commence on the first day of January in each year and shall end on the 31st day of December of the same year, unless otherwise determined by the Board/Commission.

ARTICLE _____ - INDEBTEDNESS OF THE AUTHORITY/COMMISSION

The Authority/Commission shall not incur indebtedness pledging, on a parity basis, any revenues from airport facilities that are otherwise pledged to secure any obligation, note, bond, or other instrument of indebtedness for which the full faith and credit of a County has been pledged unless the Leelanau County and Grand Traverse County Board of Commissioners first approve the issuance of such indebtedness by resolution.

The Commission after adoption of a resolution approving the action, may enter into any contract or agreement for the purchase of real or personal property for Airport purposes, to be paid for in installments over a period of not to exceed 15 years and not to exceed the useful life of the property acquired as determined by the resolution.

ARTICLE _____ - GRANTS IN AID

The Authority/Commission shall have the power to apply for and accept contributions, capital, grants, gifts, donations, services, or other financial assistance from any source including the United States of America or any agency or instrumentality thereof, or from the State of Michigan or any agency or instrumentality thereof and enter into such agreements as may be necessary to accept such Grants in Aid.

ARTICLE _____ – BUDGET

Before the beginning of each fiscal year, the Board/Commission shall prepare a budget containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay including funds for the operation and development of the airports under the jurisdiction of the Board/Commission, and the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the Authority/Commission maturing during the ensuing fiscal year or which have previously matured and are unpaid, and an estimate of the revenue of the Authority/Commission from all sources for the ensuing fiscal year. The Board/Commission must adopt its budget in accordance with the requirements of the Uniform Budgeting and Accounting Act, 1968 PA2, MCL 141.421 to 141.440a., as amended.

Grand Traverse County and Leelanau County agree to share all of the costs for operating, maintaining improving, expanding, administering and financing the Airport that are not covered by Airport revenues on the following basis:

85% - Grand Traverse County

15% - Leelanau County

Contribution payments necessary to meet the term of this Agreement shall be made by the Counties to NRAC in two equal payments of fifty percent (50%) on or before March 10 and September 10 of each fiscal year.

ARTICLE – CONVEYANCE OF AIRPORT PROPERTY

Grand Traverse County and Leelanau County shall upon the filing of these Articles convey by quit claim deed for the sum of one dollar (\$1.00), all Airport Property as identified on the Airport's Exhibit A, to the Authority, it being expressly understood that such conveyance shall incorporate all of the provisions pertaining to certain rights, licenses, privileges, responsibilities, and grants from the United States Department of Transportation, Federal Aviation Administration, and the Michigan Aeronautics Commission. The Authority shall accept title to the Airport Property as is and shall assume responsibility for the correction of any defects in title.

Grand Traverse County and Leelanau County shall upon execution of this Agreement lease for the sum of one dollar (\$1.00) all Airport Property free and clear of any defects to be used by the Commission for all airport purposes to the Commission, it being expressly understood that such lease shall incorporate all of the provisions pertaining to certain rights, licenses, privileges, responsibilities, and grants from the United States Department of Transportation, Federal Aviation Administration, and the Michigan Aeronautics Commission. Upon execution by the parties, the Lease shall replace the Agreement Amending and Replacing Lease of May 1, 1972, entered into on February 17, 1999, in its entirety. "Airport purposes" means aeronautical and non-aeronautical uses of the Airport Property or activities of the Commission that are determined by the

Commission to be necessary or desirable for, benefit, or contribute to the establishment, construction, enlargement, improvement, maintenance, equipment, operation and regulation of the Airport and Airport facilities.

ARTICLE ____ - ZONING

Within 180 days of signing establishment, the Authority will create a Northwest Regional Airport Authority Zoning Board with jurisdiction over zoning of property that is a part of the airport that will consist of seven (7) members. Four (4) members shall be selected by the Authority, one (1) member shall be selected by East Bay Township, one (1) member shall be selected by Garfield Township, and one (1) member shall be selected by the City of Traverse City. The Authority shall adopt an ordinance regulating the use and development of property that is a part of the Airport.

The City of Traverse City shall have zoning jurisdiction for non-aeronautical uses at the Airport. Pursuant to the Michigan Aeronautics Code and *Capital Regional Airport Authority v Charter Twp of Dewitt*, 236 Mich App 576 (1999), the Commission shall have exclusive zoning jurisdiction for aeronautical uses and activities necessary for aeronautical uses at the Airport.

ARTICLE ____ – EMINENT DOMAIN

The Authority/Commission may not exercise the power of eminent domain or institute condemnation proceedings under Section 143 of the Act except upon approval of both the Grand Traverse County Board of Commissioners and the Leelanau County Board of Commissioners. Condemnation proceedings shall be instituted in the names of the political subdivisions jointly, and the property acquired shall be held by the political subdivisions as tenants in common.

ARTICLE ____ – VOTING REQUIREMENTS

A. Unless otherwise provided by law, these Articles of Incorporation/Operating Agreement, or bylaws adopted by the Board/Commission, all questions which arise at a meeting of the Board/Commission may be determined by the votes of a majority of members present,

except for those items enumerated below in Section B.

B. The following actions of the Board/Commission require a two-thirds (2/3) vote of the members appointed and serving:

1. Acceptance or conveyance of the operational jurisdiction of another publicly owned airport;
2. Commitment of revenues of the Authority/Commission for the payment of indebtedness;
3. Adoption of ordinances; and
4. Removal of the Chief Executive Officer/Airport Director.

ARTICLE ___ - DISPUTE RESOLUTION

In the event that one or both of the Counties do not approve a request by the Commission/Authority required to be approved by the Counties, the Counties shall meet jointly with the Commission within 30 days along with a neutral third-party facilitator to resolve the dispute. In the event that a dispute regarding the exercise of eminent domain is not resolved, an action shall be filed in the 13th Circuit Court seeking a declaration by the Court of whether the proposed acquisition is necessary to accomplish a public purpose.

ARTICLE ___ – EFFECTIVE DATE

The Authority shall become effective upon the filing of certified copies of these Articles with the Secretary of State, as required by the Regional Airport Authority Act.

ARTICLE ___ – ADOPTION AND AMENDMENTS

These Articles of Incorporation/This Operating Agreement shall be adopted and may be amended by an affirmative vote of the majority of the Leelanau County Board of Commissioners and the Grand Traverse Board of Commissioners elect.

ARTICLE ___ - PUBLICATION AND FILING

Upon adoption of or amendment to these Articles of Incorporation, a printed copy of the Articles of Incorporation or the Amended Articles shall be published once in a newspaper of general circulation within each County and shall be filed with the Office of the Great Seal of the State of Michigan within 30 days of adoption.

The foregoing Articles of Incorporation were adopted by the Leelanau County Board

of Commissioners in 8527 E. Government Center Dr., Suttons Bay, Michigan, at a meeting duly held on <DATE> and by the Grand Traverse County Board of Commissioners in 400 Boardman Avenue, Traverse City, Michigan at a meeting duly held on <DATE> .

ARTICLE ____ - ENTIRE AGREEMENT

The parties acknowledge and agree that this Operating Agreement replaces the Amended Joint Operating Agreement for the Northwestern Regional Airport Commission dated February 17, 1999 in its entirety. If any term or provision of this Agreement or the application of the Agreement to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement , or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and each remaining term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

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