



MUSKEGON, MICHIGAN

**A POLICY TO GOVERN AGREEMENTS
INVOLVING THE USE OR DISPOSITION OF
AIRPORT PROPERTY
FOR AERONAUTICAL ACTIVITIES**

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MUSKEGON COUNTY, MICHIGAN

A POLICY TO GOVERN AGREEMENTS INVOLVING THE USE OR DISPOSITION OF AIRPORT
PROPERTY FOR AERONAUTICAL ACTIVITIES AT MUSKEGON COUNTY AIRPORT

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Section 1 - General Statement of Policy

As an Airport Sponsor and recipient of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grants, the County of Muskegon (hereinafter, "County") is obligated to operate the Muskegon County Airport (hereinafter, "Airport" or "MKG") for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activities on fair and reasonable terms and conditions without unjust discrimination. Given these obligations, the County hereby establishes this policy to set forth a standardized system and process for leasing property and constructing improvements at the Airport.

In furtherance of this objective, it shall be the policy of the County to encourage the establishment of businesses offering general aviation services to the public at the Airport based on the following principles:

- Preservation of the County's investment in the Airport and its resources;
- Facilitation of orderly and equitable management of the Airport;
- Ensure the provision of high-quality services and consistent quality of facilities at the Airport;
- Providing equitable and uniform treatment of all Operators, Lessees, and Users;
- Ensure compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of Federal Funds;
- Enable conformity with the approved Airport Master Plan, Strategic Plans, and Airport Layout Plan (ALP);
- Make the Airport available for public use on reasonable terms without unjust discrimination;
- Assist in maintaining a fee and rental structure with the goal of financial self-sustainability to the greatest extent possible for the Airport; and
- Allow for economic development and job creation.

Section 2 - Definitions

For purposes of this Leasing Policy, the following definitions shall apply:

Aeronautical Services/Activities: means any activity or service conducted at the Airport that involves, makes possible or is required for the operation of aircraft, or that contributes to or is required for the safety of such operations. The following services/activities commonly conducted on airports are Aeronautical Activities within this definition: charter operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising, surveying, air-carrier operations, aircraft sales and services, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, and any other activities that, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an "Aeronautical Activity."

Agreement: means the written agreement between the County and an Operator or Lessee specifying the terms and conditions under which the Operator may conduct commercial aviation activities and Lessee may occupy Airport property. Such Agreement will recite the terms and conditions under which the activity will be conducted at the Airport, including but not limited to: rents, fees, and charges to be paid; and the rights and obligations of the respective parties.

Airport: means the Muskegon County Airport, and all of the property, buildings, facilities, and improvements within the exterior boundaries of the Airport as it now exists on the Airport Layout Plan or Exhibit A, or as it may hereinafter be extended, enlarged, or modified

Airport Manager: means the individual employed and authorized by the County to be the chief administrative officer of the Airport, or the person authorized by the Airport Manager to act for or on behalf of the Airport Manager, with respect to any particular matter.

Airport Leasing Policy: means the “Policy to Govern Agreements Involving the Use or Disposal of Airport Property for Aeronautical Activities” as established and amended from time to time by the County, to govern the safe, orderly, and efficient use of Airport property.

Airport Layout Plan: means the FAA approved and County adopted drawing, as may be amended from time to time, which reflects an agreement between the FAA and Airport depicting the physical layout of the Airport and identifying the location and configuration of current and proposed runways, taxiways, buildings, roadways, utilities, NAVAIDs, etc. and proposed allocation of Airport land and/or improvements to specific uses and/or development.

Applicant: means a Person submitting an application to the County to Lease Airport property.

Board: means the Muskegon County Board of Commissioners, the legislative body that governs the County of Muskegon, Michigan.

City: means the City of Norton Shores unless otherwise specified.

County: means Muskegon County, owner and operator of the Airport, acting by or through the Muskegon County Board of Commissioners or any duly authorized employee, agent or instrumentality of Muskegon County, Michigan.

Commercial Aeronautical Activity: means an Aeronautical Activity for commercial purposes as defined in the Airport Minimum Standards.

FAA: means Federal Aviation Administration.

General Aviation: means all phases of aviation other than military aviation and scheduled or non-scheduled commercial air carrier operations.

Lease: means a contract between the County and any Person wherein the County grants the use or occupancy of Airport property in conformance with certain leasehold interests for a specified period of time in exchange for specified rent.

Lessee: means any Person obtaining a lease from the County to occupy space and hold certain leasehold interests at the Airport.

MDOT: means the Michigan Department of Transportation, Office of Aeronautics.

Minimum Standards: means the Airport Minimum Standards for Commercial Aeronautical Service Providers at the Muskegon County Airport as adopted by the County, and as amended from time to time.

Operator: means either a Fixed Base Operator or a Specialized Aviation Service Operator when performing a Commercial Aeronautical Activity under the Airport Minimum Operating Standards.

Person: means and includes any individual, corporation, firm, partnership, association, company, business, trust, joint venture, or other legal entity.

Rules and Regulations: means the policies, procedures, and regulations, which are established and amended from time to time by the County, to govern the safe, orderly, and efficient use of the Airport.

Shall: the word “shall” is always mandatory and not merely directory.

State: means the State of Michigan.

Sublease: means a written agreement, approved by the County, stating the terms and conditions under which a third party leases space from a Lessee for the purpose of providing aeronautical services at the Airport.

Section 3 - Exclusive Rights

- A. Federal law forbids the granting of an exclusive right to provide aeronautical services at an airport on which federal funds have been expended. An exclusive right is a power, privilege or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. The County will not grant any such special privilege or monopoly in the use of public use Airport facilities.
- B. The presence on the Airport of only one Lessee engaged in a particular aeronautical service(s) will not, in and of itself, indicate that an exclusive right has been granted; however, it is the policy of this County not to enter into or promote any understanding, commitment, or express agreement to exclude other reasonably qualified Lessees. Accordingly, those who desire to enter into a Lease with the County to engage in an aeronautical activity should neither expect nor request the County to exclude others who desire to engage in the same or similar activities. The opportunity to engage in an aeronautical activity shall be made available to those meeting reasonable qualifications and standards relevant to such activity and as space may be available at the Airport for such an activity.

Section 4 – Requests for Lease/Use Agreements

- A. Written Application Required. Any Person desiring to enter into a lease with the County for permission to occupy Airport property shall make written proposal to the County for such permission.
- B. Applicant Must Demonstrate Qualifications. Proposal materials shall consist of all the information specified in this Airport Lease Policy, the Airport Minimum Standards, if applicable, and all

documentation deemed necessary by the County for a full and complete analysis of the Applicant's qualifications and the benefit that will accrue to the aviation public from the Applicant's proposed use of Airport property.

Section 5 – Lease Proposal Process

Each proposal to lease Airport Property shall be in writing and in sufficient detail to discern the complete qualifications of the Applicant and shall include, as a minimum, the following:

- A. The name, address, electronic mail address, and telephone of the Applicant.
- B. The amount, size, and location of the land and/or facilities to be leased.
- C. Descriptions and cost estimates of any proposed capital improvements.
- D. The types and amounts of insurance coverage to be maintained for the proposed use of Airport Property. The type and limit of insurance required shall be established by the County and updated from time to time as needed.
- E. A current financial statement prepared by the Chief Financial Officer of the Applicant and certified by an independent certified public accountant. The County shall consider financial statements in evaluating the Applicant's financial ability to construct facilities, occupy Airport property, and enter into a Lease of Airport property.
- F. For construction of proposed leasehold improvements, the County may require evidence of the Applicant's financial ability to complete the improvements in one of the following forms:
 - 1. A performance bond in the amount equal to the cost for constructing the proposed improvements;
 - 2. An irrevocable letter of credit guaranteeing funds to complete the project;
 - 3. An escrow agreement administered by a title and escrow company; or
 - 4. A trust administered by a commercial bank.
- G. If an Applicant is seeking to engage in a Commercial Aeronautical Activity, the Applicant shall also provide all application information and materials required by the Airport Minimum Standards.
- H. The Applicant shall agree to provide any additional information and material deemed necessary or requested by the County.
- I. The proposal shall be signed and submitted by the official representative of the entity of the business, if a sole proprietorship; every partner if a partnership; every member if a Limited Liability Company, and the President or CEO if a corporation.

Section 6 - Action upon a Proposal to Lease Airport Property

The Airport Manager will review the proposal against the criteria outlined in this section. If the Airport Manager deems the proposal meets these criteria, the Airport Manager will recommend entering into a lease with the proposed tenant to the Board, in accordance with the proposal and this leasing policy. If it is determined the criteria have not been met, the Airport Manager will deny the proposal temporarily until the criteria can be met or finally, if it is determined the criteria cannot ever be met.

The Criteria:

- A. The proposed use meets the requirements of the Airport Master Plan, the Airport Layout Plan, the Airport Strategic Plan, if in place, the County Zoning ordinance and map, and this Airport Leasing Policy.
- C. The proposed use does not create a safety hazard on the Airport and the construction of the airport improvements associated with the proposed use does not create a safety hazard.
- D. The granting of the application will not require the County to spend funds, supply labor or materials in connection with the proposed activity, and the activity is not expected to result in a financial loss to the County.
- E. Suitable space is available to accommodate the entire activity proposed or suitable land is available to construct the buildings and facilities necessary to accommodate the entire activity outlined in the proposal.
- F. The proposed improvements can be constructed and the use instigated and operated without unduly interfering with other airport operations or causing undue congestion on the airport. A hazard determination, if necessary, will be completed by the FAA.
- G. The Applicant has not, either intentionally or unintentionally, misrepresented or omitted any pertinent information in the application or in supporting documents.
- H. The Applicant does not have a record of violating the Rules and Regulations of the Airport or of any other airport, FAA regulations, or any other federal, State, County or local statutes, laws, rules, or regulations, which would render the Applicant unsuitable as an airport tenant.
- I. The Applicant has not defaulted in the performance of another lease or any other agreement with the County or any other airport(s).
- J. The Applicant, in the opinion of the County, exhibits adequate financial responsibility to undertake the project based upon the financial information provided.
- K. The Applicant can provide acceptable surety in the amount required by the County for that Agreement.
- L. The Airport Manager finds that the proposed activity or development is in the best interest of the County, the Airport, or the public.

Section 7 - Standards for Leasing/Use of Airport Property and Premises

- A. Space Limited to Demonstrated Need. A single aeronautical activity, although meeting all reasonable standards and qualifications, shall be limited to a lease of such space as is needed for that activity. When an Applicant seeks to lease property from the County, he/she must provide evidence of demonstrated need for the Airport property in question.

Where occupancy of existing Airport facilities is involved, “demonstrated need” shall mean the ability of the Applicant to occupy premises leased from the County as of the effective date of the Lease. Where construction of facilities, or alterations to an existing facility, are involved, “demonstrated need” shall mean the ability to obtain a certificate of occupancy from the City of Norton Shores for the proposed facility within six (6) months following receipt of possession of the leased property unless the County determines a longer period is warranted due to the scope of construction.

- B. Requests for Additional Space. If the need for additional space becomes apparent at a later date, such space, as well as any new areas developed for the service and support of aeronautical activities, will be made available to all qualified proponents or bidders, including current Lessees. The County will not award or grant, in advance, any options or preferences (including the right of first refusal) on future sites to current a Lessee.

If an existing Lessee needs additional Airport space to accommodate increased demand for its existing services or to expand an existing service, that Lessee shall notify the County, in writing, of the need for additional space. The written notice shall be sufficiently detailed to document a “demonstrated need” for the additional space requested. The County may grant the Lessee the additional space requested (to the extent the Lessee has a demonstrated need therefore) or the County, if prior to the receipt of the Lessee’s notice it has received an application from another qualified Applicant demonstrating a need for such space, may negotiate with one or more Persons who have expressed an interest in the space in question to determine which alternative would be most advantageous to the County. In any case, the County will not allow an existing Lessee to “land bank” airport property.

If the need for additional space is for, or in connection with, a new proposed aeronautical activity, one not authorized by the Lessee’s existing Lease, the request for additional space shall be treated by the County as one for a new Lease.

- C. Term. The County determines the length of term for a Lease, Agreement, or Permit based on a variety of factors including:
1. Whether the Lessee is seeking to obtain space in an existing building or whether a long-term land lease is being sought for construction of improvements to Airport property;
 2. The designation of the facility or proposed property on the ALP;
 3. The Lessee’s proposed use of the property; and
 4. The Lessee’s proposed amount of capital investment in facilities.

While subject to specific negotiations between the County and each Lessee, the County generally offers Lease, Agreement, or Permit terms as follows:

1. An initial lease of existing facilities or a portion of an existing facility requiring no additional capital investment: 5 years or less.
2. An initial lease of property on which to construct a new private hangar: 20 years with one five-year option to extend the lease, for a total initial term of 25 years.
3. An initial lease of property on which to construct facilities to support Aeronautical Activities: 25 years with two five-year options to extend, for a total initial term of 35 years.
4. An initial lease of property on which to construct facilities to support Aeronautical Activities (again, a commercial operation) which require a significant investment in capital, which could involve the development of a larger tract of airport property, for up to a term of 50 years. Some of the criteria which the County might deem to fall into this category would include, but not necessarily be limited to:
 - a. Significant initial capital investment in leasehold improvements (greater than \$1,000,000 in calendar year construction dollars);
 - b. Significant additional capital investment in current leasehold improvements (greater than \$1,000,000 in calendar year construction dollars);
 - c. Services provided to other Airport tenants and users;
 - d. Significant job creation;
 - e. Public infrastructure extension which will benefit other parcels (i.e., roads, water, sewer); and
 - f. Potential to attract other new aviation businesses.
5. At the end of an initial term, described above, or at the end of any prior lease on the Airport, if the initial term and all extensions, have not exceeded 45 years, the County may extend the term of the lease of an existing facility for periods of 5 additional years each with no additional investment of capital, up to a total aggregated period of 50 years, upon the following conditions:
 - a. Leased premises are not required for other Airport uses according to the Airport Layout Plan;
 - b. The lease is not then in default;
 - c. The language of the lease is updated to the current airport lease language; and
 - d. The rent to be paid during the extended term is updated to the fair market value of the leased premise, not including the tenant's improvements thereon.
6. At the end of an initial term, described above, or of any prior lease on the Airport, if the initial term, when all extensions have not exceeded 45 years, the County may extend the term of a lease of an existing facility for a period of longer than 5 additional years up to a total aggregate period of 50 years, upon the conditions listed in subparagraph 5 above, plus the following:
 - a. Additional investment in the facilities (reinvestment will be based on the value of improvements, not to exceed 100% of the original value of the facility); and

- b. Upon inspection, the facilities are found to be in condition to last for the additional negotiated term. The parties will provide to the County a *Facility Condition Assessment Report*, prepared by an independent, qualified contractor, approved by the County in writing, attesting to the condition of the leasehold improvements. Should said report indicate the presence of improper maintenance or conditions of the improvements that render them unsafe for occupancy, the County will defer action on the requested transaction until the deficiencies have been corrected.
7. In order to obtain an extension of the term of a lease, the Lessee must submit a written application to the Airport Manager at least one hundred eighty (180) days prior to the end of the current lease term.
- D. Sale of Leasehold Improvements on Airport Property. During the unexpired term of any lease upon the airport, it is the policy of the County to not allow the purchaser of said improvements to assume the existing lease of the seller. Rather, on the conditions set forth in this section, the County will enter into a new lease with the purchaser of said improvements. Those conditions are as follows:
1. The new lease will contain the current language of leases entered into between the County and airport tenants in accordance with the provisions of this leasing policy;
 2. The parties will provide to the County a *Facility Condition Assessment Report*, prepared by an independent, qualified contractor, approved by the County in writing, attesting to the condition of the leasehold improvements. Should the report indicate the presence of improper maintenance or conditions of the improvements that render them unsafe for occupancy, the County will defer action on the requested transaction until all deficiencies are corrected.
 3. The parties will provide to the County a *Phase I Environmental Report* of the leased premises prepared by an independent, qualified contractor, approved by the County in writing. Should the report indicate the presence of environmental concerns, the County will defer action on the requested transaction until all deficiencies are corrected.
 4. **The parties will pay to the County an administrative fee equal to 3% of the sale price of the improvements.**
 5. The term of the new lease for the purchaser of the improvements will be no less than the remaining term of the seller's lease and the rent shall remain the rent specified in the seller's lease. If the purchaser wishes to extend the term for an additional 5 years beyond the seller's remaining term, so long as that does not make the total term of said lease 50 years or more, the rent shall be amended to the current fair market value of the lease premises.
 6. After the County and the purchaser of the improvements have entered into a lease, the former lessee, the seller of the improvements, shall have no further liability to the County under the superseded lease, or otherwise, which arise out of the lease transaction between the former lessee and the County.
- E. Ownership of Improvements at the Termination of the Lease.
1. Upon termination of the lease of airport property on which improvements have been constructed by the tenant or a prior tenant, the tenant may remove said improvements, upon giving written notice to the Airport Manager, at least one hundred eighty (180) days prior to

the end of the term, of the tenant's election to remove said improvements. The removal shall be completed at or prior to the end of the lease term.

2. If the tenant does not elect to remove the improvements or if it fails to provide the required one hundred (180) day notice, the County shall decide if it wishes to require the tenant to remove said improvements. The County may request a real estate appraisal of the leasehold improvements prepared by an independent, qualified contractor, approved by the County in writing detailing the current market value and useful life of said improvements. In addition, the tenant must provide a satisfactory environmental report. The Airport Manager shall, at least ninety (90) days prior to the end of the said term, notify the tenant, in writing, of the election made by the County with respect to the improvements.

If the County elects to keep the improvements, the notice by the Airport Manager to the tenant of the County's election to retain the improvements shall constitute the only conveyance needed to transfer any interest that the tenant might have in said improvements to the County. The tenant, having failed to notify the County by the stated date of their election to retain said improvements, constitutes an election by the tenant not to retain the improvements, and thereby the tenant will be deemed to have abandoned said improvements.

3. If the County notifies the tenant to remove the improvements, the tenant will then have until the end of the lease term to remove the said improvements, with the cost to be borne by the tenant. If the process has not been completed by the end of the lease term, the tenant shall be liable to the County for additional rent at the lease rate until the improvements have been removed and the site left free of debris from the said removal. If the tenant fails to complete the removal of the improvements within thirty (30) days after the end of the term, the County may cause the improvements to be removed by a contractor, and bill the tenant for the cost, for which the tenant shall be liable as additional damages under the terms of the lease document.

F. Leases for Non-Aeronautical Activities. The County will not approve any proposed lease of aeronautical property for non-aviation activities for longer than a brief, interim period of time, generally five or fewer years, and provided the activity does not violate FAA grant assurances. Such leases are also subject to FAA approval and the proposed Lessee obtaining all necessary zoning and other approvals from the County and City.

G. Leases for Private Aeronautical Uses. The County is required to operate the Airport for the maximum use and benefit of the public, and must retain the ability to make reasonable provision for essential support services for those who use the Airport; nevertheless, some private aeronautical uses may be beneficial to the County; for instance, a private flying club might be a desirable and compatible Operator. Proposed leases for private aeronautical uses will be evaluated on a case by case basis, taking into account the strategic business plan of the Airport, the benefits which may be derived from the proposed lease, the potential costs of the proposed lease to the County, the availability of suitable space, the potential for conflict or interference with the public uses of the Airport, and any other factors the County deems relevant.

H. Adherence to Airport Layout Plan (ALP) Required. The ALP depicts County-owned property on the Airport to be utilized for aeronautical activities and identifies existing facilities and plans for future development. The ALP reflects the existing and proposed allocation of areas of the Airport to

specific operations and support functional usage. No use, occupancy, construction, modification, or improvement that is inconsistent with the Airport's FAA-approved ALP shall be allowed.

- I. Development of Vacant Airport Property. When a Lessee or Operator desires to construct facilities at the Airport, limited availability of vacant, appropriate space may restrict the County's ability to grant permission for such development. There are only a limited number of available sites on which to build facilities to accommodate aeronautical activities at the Airport.

Any application for permission to develop these properties as indicated shall include, in addition to all other required materials, a site plan depicting the nature and location of the proposed development.

- J. No Liens or Encumbrances to Airport Property. The subordination of Airport property by mortgage, easement, or other encumbrance will normally be considered as a transaction that would deprive the County of the rights and powers necessary to perform its covenants in its agreements with the federal government and under bonds that may be issued, from time to time, to finance Airport operations. Because of this, the County shall not grant proposed developments that would require such encumbrances. The County will always require a Lessee or Operator developing Airport property to indemnify and hold the County harmless from any mechanics' or other liens which might be filed against Airport property as a result of the development.
- K. Financing Airport Development. The County is under no obligation to provide financing, or to make any improvements to Airport property to facilitate a development proposed by an existing or prospective Lessee. If such a Lessee cannot demonstrate the financial means to implement and pay for such development that may be an indication that the proposed development would not be in the best interests of the County or the public using the Airport. If a prospective Lessee has demonstrated the requisite financial ability, the County may choose to pursue any supplemental federal, state, or County funds to contribute to the leasehold improvements, but only if in doing so there would be no diversion of funds away from capital improvements or the Airport capital budget program planned by the County.
- L. Airport Operated for Benefit of the Public. Through its Leases, and by other means, the County will ensure that the Airport is operated for the use and benefit of the public and is made available to all types, kinds, and classes of aeronautical activities with priority given to uses that further the County's goals and the Airport's strategic business plans.
- M. General Rights and Privileges Granted. Airport Leases are designed to accomplish one or more of three basic rights or privileges: 1) the right for a Person to use the landing area and other public Airport facilities in common with others so authorized; 2) the right to occupy as an Operator, and to use exclusively, certain designated premises; and/or 3) the commercial privilege or the franchise right to offer goods and services to the public who use the Airport. The County will not enter any Lease without written receipt of adequate consideration for the rights granted therein.
- N. Control over Operations. Any Lease granting the right to serve the public on the premises of the Airport shall be subject to terms and conditions reserving to the County sufficient control over operations to ensure that the Lessee will treat patrons fairly. The Lessee must agree to make available its services and facilities on fair and reasonable terms, and without discrimination.

- O. Control over Aeronautical Activity and Development. The County will not enter into a Lease requiring it to divest itself of the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, or the right to prevent any Lessee from erecting, or permitting to be erected, any building or other structures which might limit the usefulness of the Airport or constitute a hazard to aircraft.
- P. The County will not enter into a Lease requiring it to divest itself of, or limit its right to develop or improve the Airport as it sees fit, regardless of the desires or views of any Lessee and without interference or hindrance from such a party.
- Q. Minimum Standards. The Minimum Standards set forth the qualifications and conduct which a Lessee desiring to conduct certain aeronautical activities at the Airport must meet. They establish a basis for practical negotiations between the County and potential Lessees; however, prospective Lessees should be aware that the County, if presented with a choice between multiple potential Lessees for a single space or facility, will give preference to Lessees who can offer the County and the public the highest standard of quality and service which may well exceed the Minimum Standards for a proposed activity.

Existing and prospective Lessees shall understand that the County may modify its Minimum Standards from time to time, in order to ensure a higher quality of service to the public. Only in the rare circumstance, where the aviation community at the Airport has encountered difficulty in attracting a competent service entity, shall the County consider waiving a Minimum Standard to allow a period of initial development. In all other circumstances, it is the policy of the County not to enter into agreements with Operators who cannot meet the applicable Minimum Standards.

- R. Off-Premises Access. Pursuant to the Airport's approved Minimum Standards for Commercial Aviation Operators, Section IX – Through-The-Fence Agreement, the Federal Aviation Administration (FAA), in Advisory Circular 150/5190-7, recommends airport owners refrain from entering into Through-The-Fence agreements. The Michigan Office of Aeronautics supports the FAA recommendation.

Muskegon County Airport understands that some Through-The-Fence (TTF) operations may be beneficial to the Airport's operation; therefore, consideration to Through-The-Fence agreements for commercial operations will be given on a case-by-case basis. Residential TTF will not be considered. Prospective Through-The-Fence operators will be expected to conform to the same operating standards (insurance, fees, commission payments, etc.) as on-site operators.

At a minimum, prospective Through-The-Fence operators will be required to fulfill the following requirements: (1) pay an annual airport access fee; (2) pay a minimum one-half acre ground lease equivalent rate; (3) construct any taxiways necessary to access the airfield; and, (4) maintain airfield perimeter fence continuity. More information on Through-The-Fence operator expectations can be found in the Advisory Circular referenced in this Paragraph or by contacting the Airport Manager.

- S. Waivers of Immunity. The County will not enter into Leases that require it to waive any sovereign, governmental, or other immunity to which it may be entitled, or that would require it to submit to the laws of any state other than those of the State of Michigan.

- T. Indemnification. Every Lessee desiring to conduct aeronautical activity at the Airport shall agree to indemnify and hold harmless the County, its officers, officials, agents, representatives, and employees from and against any and all injuries, damage or harm, of any nature whatsoever, which may result from Lessee's use or occupancy of Airport property or Lessee's conduct of aeronautical activities.

Section 8 - Written Agreement

All Persons, prior to the commencement of construction of leasehold improvements or operation of an Aeronautical Activity, shall enter into a Lease with the County setting forth the terms and conditions under which the Person shall occupy and use Airport property. Leases entered into by the County are designed to protect the public interest and may contain more restrictive clauses than private sector leases, Leases shall be in a form approved by the County's legal counsel and shall at a minimum conform to local/regional standards of tenant responsibility and liability.

Each Lease shall include all provisions required by law and obligations placed upon the County by all federal and State agencies including, but not limited to, compliance with all federal, state, county, and local laws and regulations pertaining to the use, storage, and disposal of hazardous materials and storm water pollution prevention regulations. Other Lease provisions shall include, but are not necessarily limited to, the following:

- A. Description of leasehold
- B. Term of lease
- C. All fees and charges associated with occupying and operating on the premises
- D. Payment procedures relating to all fees and charges
- E. Approved activities
- F. Prohibited activities
- G. Insurance Requirements
- H. Subleasing provisions
- I. Fire Prevention
- J. Environmental Liability
- K. County entry onto premises
- L. Compliance with laws
- M. Airport Security Program
- N. Default/Termination
- O. Transfer of Airport ownership
- P. Bankruptcy
- Q. Ingress and Egress to Property
- R. Sale of Improvements
- S. Lease Renewal Options

Lease, Agreement, and Permit language is updated from time to time to reflect changes in FAA regulations and real estate law as well as to meet changing economic conditions and other risks associated with land ownership.

Section 9 - FAA Required Lease Provisions

In addition to the minimum terms and conditions listed in Section 8, each Lease shall contain the following provisions regarding subordination, emergency leasing to the United States, and non-discrimination. The language for these provisions is as follows:

- A. Lease Subordinate to Agreement between County and the United States: This lease shall be subordinate to the provisions of any existing agreement between the County and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- B. Emergency Lease to United States: During times of war or national emergency, the County shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.

All facilities of the Airport developed with federal financial assistance and all facilities usable for landing and takeoff of aircraft will be available to the United States for use by Government aircraft, (or their contractor) in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, a charge may be made for a reasonable share, proportional to such use, of the cost for operating and maintaining the facilities used.

- C. Non-Discrimination: The Lessee shall furnish all services authorized or licensed on a fair, equal, and not unjustly discriminatory basis to all users and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that it may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers, if permitted by law.

The Lessee for itself, its personal representatives, successors in interest, and assignees hereby agrees that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
3. That the premises are to be used in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended.

4. That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the lease and re-enter and repossess said land and the facilities thereon and hold the same as if said lease had never been made or issued.

Section 10 – Rents, Rates, Fees, and Charges

- A. Financially Self-Sustaining. The County has an obligation to make the Airport as self-sustaining as possible under the circumstances existing at the Airport at any given point in time. Toward this end, the County, through its Agreements and by other means available to it, shall endeavor to recover the cost of providing its facilities through rents, fees, or other charges. All Agreements must provide for adequate consideration to be received by the County in compensation for the rights and privileges therein granted. It shall be the policy of the County to seek contractual terms and conditions that, while fair and nondiscriminatory, provide the most advantageous returns to the County.
- B. No Unjustifiably Discriminatory Rates. Each Operator shall be subject to rates, fees, rents and other charges (e.g., fuel flowage fees, hangar rents, percentages of gross volume of business, etc.) as may be currently applicable to, or being received from others making the same or similar uses of the Airport, utilizing the same or similar facilities. Nevertheless, in respect to a contractual commitment from any Operator, the County may charge different rates to similar users of the Airport if such rates are nondiscriminatory in purpose. Differences in values of properties involved, and the extent of use made of common use facilities may be factors to be considered. Seldom will each Airport user have properties of the same value nor will their use and impact upon common facilities be the same. If one Operator is in what is considered a prime location, and another is in a less advantageous area, there could logically be a difference in the fees and charges to reflect this advantage of location. This factor might also influence the rental value of the property. If one Operator rents office and/or hangar space and another builds its own facilities, this would provide justification for different rent and fee structures; these two operators would not be considered essentially similar as to rates and charges even though they offer the same services to the public.
- C. Competition May Determine Applicable Rates/Fees. In situations where particular contracts, leases or agreements are awarded as the result of competition among potential operators, said Agreements will be subject to the financial terms and conditions proposed by the operators in response to the competitive process and deemed most advantageous to the County. Agreements obtained through the process of competitive negotiation and bidding may offer returns to the County that are higher than those being received from existing Operators at a given point in time.
- D. Periodic Adjustment of Rates. Providing for adjustments to rent rates and Airport user fees (e.g., percentages of an Operator's gross revenues) facilitates parity of rates and charges between new and long-standing Operators, and assists the Airport to remain as self-sustaining as possible under the circumstances existing at any given point in time. All Agreements with a term of five (5) years or more shall contain provisions subjecting the rent rates and user fees to be subject to periodic adjustment throughout the entire term of the Agreement. Adjustments shall occur at five-year intervals throughout the term(s) the Agreement remains in effect, at the discretion of the County. Under no circumstances will rent rates or user fees be adjusted to amounts less than the current fair market value at the time of the review and adjustment process conducted by the County. No single adjustment of a rent rate or user fee shall exceed one hundred percent (100%) of the current

rent rate or fee in effect at the time of the review and adjustment process conducted by the County. (The term “user fees,” for the purpose of this Airport Lease Policy, does not include landing fees or passenger facility charges).

- E. “Pioneer” Periods Disfavored. In the case of a new general aviation Operator, offering services not previously available to the public at this Airport, the County may choose to offer reduced rental rates or other inducements to obtain an Operator, recognizing that it may well be a non-profit venture during its pioneering period. In such circumstances, the “incentive rate” shall be offered only during a specific “pioneer” period, and shall be defined to end on a specified date. Future Operators coming on the Airport following the pioneer period will be expected to pay the comparable standard rates and charges based on then-current values, rates and charges, and the County shall not be obligated to offer subsequent Operators a pioneer period. Nor shall it generally be appropriate to offer an established Operator the benefit of an additional period of reduced rates or other financial inducements, beyond the Operator’s initial pioneer period.
- F. Diligent Bookkeeping Required. Income from an Operator’s Airport operations must be fully accounted for, and adequate records must be kept to evidence amounts due to the County for the various rents, fees, and charges applicable to the Operator’s operations at the Airport. The County shall be entitled to have access to such records upon request.

Section 11 – Construction of Leasehold Improvements

Through its leasing and development activities, the County seeks to promote consistent, attractive, and compatible high quality development at the Airport. In addition, it desires to encourage private sector investment in Airport facilities, develop and maintain aesthetic excellence and high standards of environmental protection. Finally, it desires to create standards of development that maintain the character of the Airport, and ensure all construction meets and exceeds all applicable safety standards and requirements.

Each Lease, Agreement, or Permit issued by the County shall include the specific development requirements for the construction of leasehold improvements on the Airport; however, following are general provisions and policies applicable to each Airport Lease, Agreement, or Permit:

- A. No leasehold improvements shall be designed, planned, constructed, reconstructed, or remodeled without the prior written approval of the Airport Manager.
- B. Any structure or facility to be constructed or placed upon the Airport shall be constructed in a manner to conform to all safety and environmental regulations of the State of Michigan and the County of Muskegon, and shall be in compliance with County and/or City of Norton Shores current site development requirements, building codes, environmental codes, and fire regulations as well as FAA design standards.
- C. The FAA requires review and approval of Airport improvements. The Lessee is required to submit “Form 7460” to the FAA detailing specific requirements of each project. The Lessee may submit all required information to the FAA directly or to the Airport Manager who shall in turn submit the information to the FAA on behalf of the Lessee. Submittal of this information shall be a prerequisite of the Airport Manager releasing final design approval to the City of Norton

Shores. No construction shall commence without the written completion from FAA that the 7460 process has been satisfactorily completed and that no hazard to air navigation will be created by this proposed project.

- D. Responsibility for obtaining appropriate approvals from government authorities and complying with their various regulations, policies, and standards shall be that of the Lessee.
- E. Lessees shall obtain at their sole expense all permits required for their construction program and shall pay all taxes, permits, inspection fees, and licenses required for the construction and operation of their business.
- F. The design of any leasehold improvement is to be carried out under the direction of a registered architect or engineer. Construction drawings are to be certified by their respective professional disciplines – architectural, structural, mechanical, electrical, and civil engineers.
- G. In accordance with Section 7.K, the County may provide infrastructure for the proposed leasehold improvements. Absent county funding of such improvements, each Lessee shall be solely responsible for and incur all expenses for connection to all leasehold improvements and facility requirements including public roadways, aprons, taxiways, electrical power, communications, water, sewer, and natural gas.
- H. Lessees shall obtain the prior written approval from the County to modify, improve, add to, or delete facilities from their leased area. If any structure is erected, placed, or altered upon in any other manner than in accordance with plans and specifications approved by the County, such construction will be considered to have been undertaken without approval. This restriction is applicable to landscaping plans as well as architectural plans.
- I. Lessees shall suppress, at their own expense, and to the satisfaction of the FAA, all electromagnetic interference with radio guidance, safety devices or with any electric or electronic equipment or installations on or associated with the Airport.
- J. The County assumes no responsibility with regard to the ability of the Lessee to complete construction or otherwise meet the Terms and Conditions of its Lease, Agreement, or Permit nor does it assume any responsibility for an error, fault, or omission in the plans and specifications that have been approved. The County reserves the right to serve notice that action must be taken to remedy any improper situations.
- K. Noise, dust, odors, storm water detention, water quality, and smoke generation are of particular concern in the design and operation of any facility on the Airport. Therefore, the design and construction of all facilities shall comply with all federal, state, county, and local environmental regulations applicable to the Airport.
- L. County and City representative(s) shall have the right at reasonable times to visit sites and enter buildings, which are completed, or in the process of being constructed, changed, repaired, moved, or demolished.