

**COOPERATION AGREEMENT REGARDING THE PRINCETON AIRPORT JOINT
AIRPORT ZONING BOARD AND THE PRINCETON AIRPORT ZONING
ORDINANCE**

This Agreement is made this ____ day of _____, 202__, by and between the City of Princeton (“City”), Sherburne County, Mille Lacs County, Princeton Township and Baldwin Township (collectively “the Entities”).

RECITALS

- A. The Entities are all of the members of the Princeton Airport Joint Airport Zoning Board (“the JAZB”) formed pursuant to the authority of Minn. Stat. § 360.063.
- B. The City has adopted the Princeton Airport Zoning Ordinance (“the Ordinance”) to govern land use and the permitted height of structures, vegetation and other potential obstacles in areas proximate to the Princeton Airport (“the Airport”) and under the approach and departure paths for flights to and from the Airport.
- C. Under the provisions of the Ordinance, the City is designated as the Zoning Administrator who is responsible for administering and enforcing the Ordinance for lands located within each respective Entity.
- D. It is proposed that the Ordinance be revised to remove the east-west crosswind runway from the Ordinance, consistent with the 2018 adopted Airport Master Plan (“JAZB Ordinance”) that, if formally proposed by the JAZB, must be approved by the Commissioner of the Minnesota Department of Transportation (“the Commissioner”) and adopted by the JAZB before they become effective.
- E. If the Amendments are adopted by the JAZB and approved by the Commissioner, the City desires that each of the Entities amend its respective comprehensive plan and zoning code, if necessary, to require compliance with the Ordinance as amended by the Amendments (“JAZB Ordinance”) and to include or otherwise incorporate the JAZB Ordinance as part of its zoning code. The City also desires that an employee of each Entity act as the Zoning Administrator to administer and enforce the JAZB Ordinance within its respective boundaries.
- F. The Entities desire to be protected against possible legal liability that may arise from their adoption and administration of a comprehensive plan and zoning ordinance that incorporates the JAZB Ordinance.

AGREEMENT

In consideration of the mutual promises and consideration set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Adoption Of Amendments And Effectiveness:** After the final public hearing on the JAZB Ordinance, the JAZB shall send its proposed final version of the JAZB Ordinance to City and the Entities. The Entities shall hold such public hearings and take such other actions as may be required by applicable law with regard to incorporating the terms of the JAZB Ordinance into their comprehensive plans and zoning codes. The Entities shall determine their acceptance of the JAZB Ordinance by approving such ordinances and amendments to their comprehensive plans as would be legally required with the effective date of such ordinances and other actions the day after the approval of the JAZB Ordinance by the Commissioner. Upon approval of the JAZB Ordinance by the City and incorporation of the terms of the JAZB Ordinance in ordinances and comprehensive plan of the Entities (“Locally Approved Amendments”), the JAZB Ordinance will then be sent to the Commissioner for approval.
2. **Ordinances and Actions Effective.** After the approval of the JAZB Ordinance by the Commissioner and the execution of this Agreement by the City and the Entities, the Locally Approved Amendments, shall become effective.
3. **Changes Required by Commissioner.** The City and the Entities understand and agree that the Entities cannot by contract agree to make legislative changes that include public hearings and comment. Accordingly, if changes to the Locally Approved Amendments are required by the City or the Commissioner, then the Entities will be required to proceed in accordance with applicable law and the rules and procedures of the Entities to consider changes to Locally Approved Amendments.
4. **Indemnification Of Entities:** In consideration of an Entity’s (i) amendment or update of its comprehensive plan to show the areas affected by the JAZB Ordinance and to guide land uses in those areas in conformance with the JAZB Ordinance, (ii) amendment or update of its comprehensive plan and zoning code to incorporate therein a provision requiring compliance with the JAZB Ordinance and to include or otherwise incorporate the terms of the JAZB Ordinance as part of the comprehensive plan and zoning code of the Entity and (iii) designation of an individual or position within the Entity to act as the Zoning Administrator to administer and enforce the JAZB Ordinance within the Entity’s boundaries, the City agrees that, subject to the other provisions of this Agreement, it will indemnify and hold harmless:
 - a. the Entity and any officer, elected official, representative, agent or employee of Entity;

- b. any person who serves or has served as the Entity's representative at meetings of the JAZB; and
 - c. any officer, employee or agent of the Entity, who may hereafter be responsible for or participate in administering or enforcing the JAZB Ordinance within the Entity's boundaries, (collectively, "Indemnified Parties" and individually "an Indemnified Party") from and against any and all losses, liabilities, obligations, costs, expenses, judgments, settlements or other damages of any nature (including reasonable attorneys' fees and expenses and reasonable costs of investigating or defending any claim, action, suit or proceeding or of avoiding the same or the imposition of any judgment or settlement) suffered by the Indemnified Party resulting from or arising out of any act of that Indemnified Party related in any way to the JAZB Ordinance, including but not limited to the consideration and adoption of the JAZB Ordinance, the incorporation of the JAZB Ordinance by the Entity into its comprehensive plan and its zoning code, and the administration or enforcement of the JAZB Ordinance by the Entity.
5. **Limitations And Exclusions:** The City will not indemnify an Indemnified Party with respect to liabilities or costs resulting from or arising out of:
- a. a failure by the Indemnified Party or an official, employee or agent of the Indemnified Party to follow the procedures established by the JAZB Ordinance, by the comprehensive plan or zoning code of the respective Entity or by applicable state law in performing any act as to which indemnification would otherwise be available under this Agreement;
 - b. the gross negligence or willful misconduct of an Indemnified Party or an official, employee or agent of that Party in performing any of the acts as to which indemnification would otherwise be available under this Agreement; and
 - c. actions involving self-dealing or conflict of interest by the Indemnified Party or an official, employee or agent of that Party; or actions of any individual (whether or not that individual is an Indemnified Party) not performed in an official capacity as a representative of the Entity of which the individual is an official, employee or agent and in direct performance of the individual's duties.
6. **Notice Of Claim:** If an Indemnified Party receives notice of a claim or of the commencement of an action or proceeding with respect to which the Indemnified Party believes the City is required by this Agreement to provide indemnification ("Claim"), the Indemnified Party must give written notice thereof to the City within 21 calendar days if the Claim is not asserted in a formal complaint in a legal proceeding, or within 10 calendar days if the Claim is asserted in a formal complaint ("Notice of Claim"). The failure to give Notice of Claim within the time specified in this section shall not relieve the City of its obligations under this Agreement unless the failure is materially prejudicial to the City's ability to negotiate, settle or defend the Claim.

7. **Assumption Or Rejection Of Defense:** Within 10 days after receiving a Notice of Claim in accordance with section 6 of this Agreement, the City must notify the Indemnified Party providing the Notice of Claim either:
 - a. that City will assume complete control of the negotiation, settlement and defense of the Claim and will be responsible for the entire amount of any costs incurred in negotiating, settling and defending the Claim, including any amount required to be paid in settlement of the Claim or in satisfaction of a final judgment, after the conclusion of any appeals, in a lawsuit based on the Claim. The City must also notify the Indemnified Party of the name and address of the counsel whom it has assigned or retained to perform the City's duties under this section. Except with the consent of the Indemnified Party, the City may not enter into any settlement of the Claim that does not include, as an unconditional term of such settlement, receipt from the claimant of an unconditional release of the Indemnified Party from all liability with respect to such Claim; or
 - b. that the Claim is not a claim for which indemnification is required under this Agreement and that the City therefore declines to provide indemnification. In such a case, the Indemnified Party may itself control the negotiation, settlement and defense of the Claim at its own expense and may select counsel of its own choice for that purpose, and the City must cooperate with the Indemnified Party in the respects described in sections 8.a, 8.b and 8.c of this Agreement as if the City were an Indemnified Party.

8. **Cooperation Of The Indemnified Party:** As a condition of the City's obligation to indemnify and hold harmless, an Indemnified Party and any Entity with which an individual Indemnified Party is associated:
 - a. subject to the Minnesota Government Data Practices Act, rules relating to attorney-client communications and other laws regarding data in the possession of public bodies, must make available to the City and its counsel all of its books, records and documents that the City or its counsel determines to be necessary for the defense of any Claim for which indemnification is sought;
 - b. must cooperate fully with the City to secure any information or testimony that the City or its counsel determines to be relevant or material to the Claim;
 - c. must execute all necessary pleadings or other documents in any litigation arising out of, or with respect to, any Claim when requested to do so by the City or its counsel; provided however, that an Indemnified Party may have counsel of its own choice review and approve any such pleadings or documents, provided that the City will not be liable for any expenses relating to an Indemnified Party's consulting such separate counsel; and
 - d. must not settle or compromise any Claim for which the City has undertaken the Indemnified Party's defense without the prior written consent of the City.

9. **Termination Of Indemnification Obligation:** The term of this Agreement shall be perpetual in duration, except as it may be terminated pursuant to this paragraph. The

parties intend for this to be an Agreement of perpetual duration and understand that the parties shall not have the right to terminate this Agreement for any reason other than the reasons set forth below in this paragraph. The parties are aware of the holding of *Glacial Plains Cooperative, v. Chippewa Valley Ethanol Company, LLLP*, 912 N.W.2d 233 (Minn. 2018) and express their intent for this Agreement to be enforced as an Agreement of a perpetual duration under the holding of that case, subject to the termination provisions set forth below. The City's obligation to provide indemnification pursuant to section 4 of this Agreement will terminate:

- a. as to an Entity and any Indemnified Party associated with that Entity, if the Entity, having amended its respective comprehensive plan and zoning code as required by section 4 of this Agreement as a condition of its becoming eligible for indemnification, thereafter further amends its comprehensive plan or zoning code so as to change materially the provisions previously adopted pursuant to section 4 of this Agreement unless such changes are consistent with changes that may be enacted by JAZB to its JAZB Ordinance after the effective date of this Agreement;
- b. as to any Indemnified Party, if the Indemnified Party or an Entity with which an individual Indemnified Party is associated fails to perform any of its obligations under section 8 of this Agreement and does not correct such failure within 30 days after being given notice by the City that the City will cease to provide indemnification if the failure is not corrected and such failure is materially prejudicial to the City's ability to negotiate, settle or defend the Claim, in which case the City shall be relieved of its obligation to hold harmless, defend and indemnify the Indemnified Party in regard to any such prejudiced claim; or
- c. as to any Indemnified Party, if, after the City has assumed responsibility for a Claim under section 7.a of this Agreement, a court or other adjudicating entity subsequently determines that the Claim is of a type described in section 5 of this Agreement, as to which no indemnification is required, in which case the City must promptly notify the Indemnified Party that it will no longer provide indemnification on such claim thirty (30) days after such notice is provided. The City agrees to notify an Indemnified Party promptly if the City determines that one of the Limitations or Exclusions in section 5 may apply and provide Indemnified Party thirty (30) days within which Indemnified Party may obtain its own counsel.

10. **Settlement of Claims:** The City may settle any claim that it assumes under paragraph 7.A. of this Agreement, provided, however, that any settlement that contains a material non-monetary settlement provision must first be approved by the Indemnified Party if the Indemnified Party is a City or Township.

11. **Separate Representation Of Indemnified Party:** If an Indemnified Party reasonably determines that there may be a conflict between the positions of the City and the Indemnified Party in connection with the defense of a Claim, or that there may be legal defenses available to the Indemnified Party different from or in addition to those being asserted on its behalf by the City, counsel for the Indemnified Party may conduct a

defense to the extent that the Indemnified Party's counsel believes necessary to protect the Indemnified Party's interests.

12. **Resolution Of Disputes Between Parties:** If a dispute arises between the City and an Indemnified Party concerning either party's compliance with or obligations under this Agreement and the parties are unable to resolve the dispute by negotiation or other procedure (including mediation or arbitration) on which the parties may agree at the time, any lawsuit arising from the dispute must be filed in the Minnesota District Court for the Sixth Judicial District (Saint Louis County).
13. **Notice:** Any notice, direction, or instrument to be delivered hereunder shall be in writing and shall be delivered to the following:

To City of Princeton:

City of Princeton
705 N 2nd Street
Princeton, MN 55371

To Sherburne County:

Sherburne County Government Center
13880 Business Center Drive NW, Suite 100
Elk River, MN 55330

To Mille Lacs County:

Mille Lacs County
Administrative Services Office
635 2nd Street SE
Milaca, MN 56353

To Baldwin Township:

Baldwin Township Clerk
30339 – 128th Street
Baldwin Township, MN 55371

To Princeton Township:

Princeton Township Clerk
10039 55th Street
Princeton, MN 55371

Such notice shall be either (i) personally delivered (including delivery by Federal Express or other overnight courier service) to the addresses set forth above, in which case it shall be deemed delivered on the date of delivery to said offices, or (ii) sent by certified U.S. Mail, return receipt requested, in which case it shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee,

in which event it shall be deemed delivered on the 3rd business day following deposit in the U.S. Mail.

Parties may change to whom notice shall be given by giving notice in accordance with this section, provided that no party may require notice to be sent to more than two addresses.

Any individual who claims entitlement to indemnification under this Agreement must include with the Notice of Claim required by section 6 of this Agreement the address to which any notice, direction or instrument under this paragraph should be delivered to that individual.

14. **Captions:** The section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any provision of this Agreement, but shall be liberally construed in favor of providing coverage for the Indemnified Entities.
15. **Construction:** The rule of strict construction shall not apply to this Agreement. The Agreement shall not be interpreted in favor of or against either the City or any Indemnified Party merely because of their respective efforts in preparing it.
16. **Governing Law:** This Agreement shall be governed by the laws of the State of Minnesota.
17. **Complete Agreement; Amendment:** This Agreement sets forth the complete agreement of the parties with respect to its subject matter. It may be amended, modified or waived as between the City and any Indemnified Party only by a writing signed by both of them.
18. **Signatures:** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument. Each signatory below represents and warrants that he or she is expressly authorized to enter into this Agreement on behalf of the Party for which that person is signing.

IN WITNESS WHEREOF, the undersigned have caused this Cooperation Agreement to be executed on behalf of the City of Princeton, Sherburne County, Mille Lacs County, Baldwin Township and Princeton Township.

CITY OF PRINCETON

Thom Walker, Mayor

Attest:

Michele McPherson, City Administrator

SHERBURNE COUNTY

Raeanne Danielowski, Chairperson

Attest:

Bruce Messelt, County Administrator

MILLE LACS COUNTY

David Oslin, Chairperson

Attest:

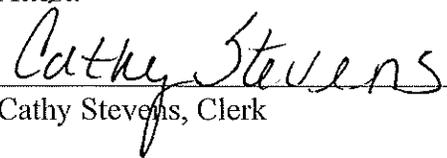
Dillon Hayes, County Coordinator

BALDWIN TOWNSHIP



Jay Swanson, Chairperson

Attest:



Cathy Stevens, Clerk

PRINCETON TOWNSHIP

Eugene Stoeckel, Chairperson

Attest:

Doug Dahl, Clerk