

ENROLLED ORDINANCE 168-115

APPROVE PLANE SAFE AIRCRAFT MAINTENANCE, INC
OPERATING AGREEMENT

WHEREAS, Aeronautical Service Providers operate on Waukesha County Airport by applying to and receiving approval from the Airport Operations Commission, and

WHEREAS, Section 9-58 of the Waukesha County Code of Ordinances requires all Aeronautical Service Providers to enter into a lease or other written agreement with the County, and

WHEREAS, the Waukesha County Airport, with review by the Airport Operations Commission and approval by the Waukesha County Board of Supervisors, creates agreements with Aeronautical Service Providers, and

WHEREAS, Plane Safe Aircraft Maintenance, Inc. has applied to the Airport Operations Commission to be designated as an Aeronautical Service Provider at the Waukesha County Airport to provide aircraft airframe, engine and accessory maintenance and repair services, and

WHEREAS, the Airport Operation Commissions recommended approval Plane Safe Aircraft Maintenance, Inc.'s Aeronautical Service Provided Application and further recommended that Plane Safe Aircraft Maintenance, Inc. be exempt from the segregated painting area requirement for aircraft airframe, engine and accessory maintenance and repair service providers contained in Section 9-63(b)3 of the County Code due to the fact that the painting activity to be performed by Plane Safe Aircraft Maintenance, Inc. is infrequent and primarily spot maintenance, is below the minimum paint booth requirements set by the Federal Aviation Administration (FAA), and is considered a spray area rather than a spray room or booth by the Occupational Health and Safety Administration (OSHA), and

WHEREAS, Waukesha County Airport and Waukesha County Corporation Counsel have drafted an Operating Agreement, and

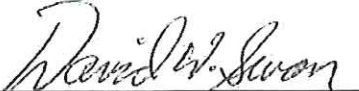
WHEREAS, the approval of the Operating Agreement will allow Plane Safe Aircraft Maintenance, Inc. to operate on Waukesha County Airport , and

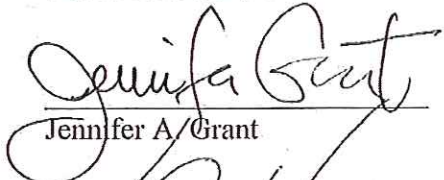
WHEREAS, Plane Safe Aircraft Maintenance, Inc. has a vibrant business that serves the maintenance needs of the Waukesha County Airport's recreational and corporate aviation customers, contributes heavily to the community outreach and customer appreciation events at Waukesha County Airport, and promotes the furtherance of an aviation community.

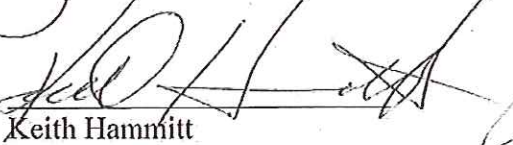
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Operating Agreement between Waukesha County and Plane Safe Aircraft Maintenance, Inc., which is on file with the Department of Public Works, is approved allowing an exemption from Waukesha County Airport Minimum Standards requirement to construct a segregated painting area, and the Airport Manager is further authorized to execute the Operating Agreement and any other necessary related documents on behalf of the County.

APPROVE PLANE SAFE AIRCRAFT MAINTENANCE, INC
OPERATING AGREEMENT

Presented by:
Public Works Committee

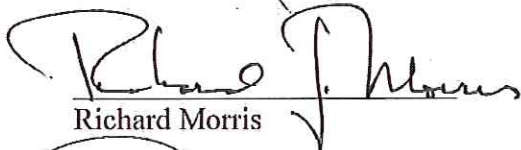

David W. Swan, Chair


Jennifer A. Grant


Keith Hammitt

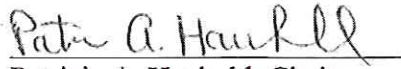
(ABSENT)
Pauline T. Jaske


Walter L. Kolb

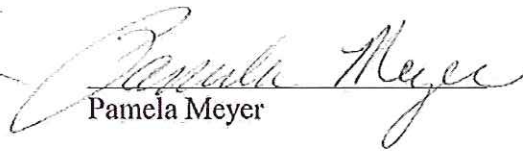

Richard Morris


Thomas J. Schellinger

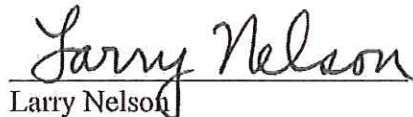
Approved by:
Finance Committee

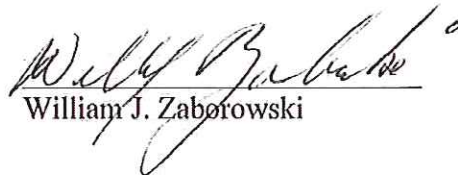

Patricia A. Haukohl, Chair


Daniel J. Draeger

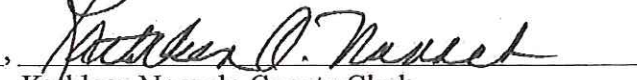

Pamela Meyer

absent
Richard Morris



Larry Nelson


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 4/8/14, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: 
Vetoed: _____

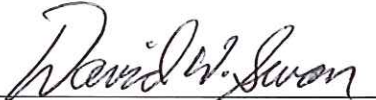
Date: _____, Daniel P. Vrakas
Daniel P. Vrakas, County Executive


Digitally signed by Daniel P. Vrakas
DN: cn=Daniel P. Vrakas, o=Waukesha County,
ou=Waukesha County Executive,
email=countyexec@waukeshacounty.gov, c=US
Date: 2014.04.14 12:18:19 -05'00'


4-14-14

APPROVE PLANE SAFE AIRCRAFT MAINTENANCE, INC
OPERATING AGREEMENT

Presented by:
Public Works Committee



David W. Swan, Chair


Jennifer A. Grant


Keith Hammitt


(ABSENT)
Pauline T. Jaske


Walter L. Kolb


Richard Morris


Thomas J. Schellinger

Approved by:
Finance Committee



Patricia A. Haukohl, Chair


Daniel J. Draeger



Pamela Meyer

absent
Richard Morris


Larry Nelson


William J. Zaborowski

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Date: 4/8/14, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: _____
Vetoed: _____

Date: _____,
Daniel P. Vrakas, County Executive

**PLANE SAFE AIRCRAFT MAINTENANCE, INC.
OPERATING AGREEMENT**

This agreement (the "Agreement") is between Waukesha County (the "County"), a municipal corporation that owns the Waukesha County Airport, and Plane Safe Aircraft Maintenance, Inc. ("Plane Safe"), a provider of aeronautical services.

WHEREAS, Plane Safe wishes to provide certain aeronautical services at the Airport.

WHEREAS, Division 3 of Article II of Chapter 9 of the Waukesha County Code of Ordinances entitled "Minimum Requirements for Aeronautical Services" (the "Minimum Standards"), including but not limited to Section 9-58 "Minimum Standards for all Aeronautical Service Providers," sets forth requirements and obligations for aeronautical service providers at the Airport. Among other things, the Minimum Standards require that the service provider enter into a lease or an agreement with the County.

WHEREAS, there is currently no lease between the County and Plane Safe, and this Agreement shall constitute the agreement required by the Minimum Standards.

NOW, THEREFORE, the County and Plane Safe (collectively, "the Parties") agree as follows:

**ARTICLE 1
TERM**

This Agreement commences as of December 11, 2013 and ends on December 11, 2018 (the "Term"), unless terminated sooner.

This Agreement may be extended up to two additional 5 year terms (each, an "Extended Term") by mutual agreement of the Parties. Plane Safe shall make a written request for any extension of this Agreement to the Airport Manager no fewer than sixty (60) days before the end of the then current Term or Extended Term, as the case may be. The County must accept the Extended Term by written acknowledgement for the Extended Term to become effective.

**ARTICLE 2
CONTINGENT SUBLEASE**

This Agreement is contingent upon Plane Safe being the sublessee of the Aircraft Maintenance Building currently leased to Atlantic Aviation Services (as assignee of Waukesha Flying Services, Inc.) pursuant to that certain FBO Lease and Operating Agreement between the County and Waukesha Flying Services, Inc. (the "FBO Lease") by which Atlantic Aviation Services leases, among other things, a parcel of land and the Aircraft Maintenance Building at the Airport located at 503 Bluemound Road.

A written sublease between Plane Safe and Atlantic Aviation Services for the Aircraft Maintenance Building ("Sublease") has been reviewed and approved by the County. No amendment to the Sublease may be made without prior written approval from the Airport

Manager, and the failure to obtain any such prior written approval gives the County the right to declare this Agreement terminated.

If the Sublease between Plane Safe and Atlantic Aviation Services is terminated, Plane Safe shall immediately notify the Airport Manager, and the County shall have the right to declare this Agreement terminated.

ARTICLE 3 MINIMUM REQUIREMENTS ORDINANCE

The Minimum Standards ordinance is attached to and made a part of this Agreement. Whether set forth in this Agreement or not, all of the requirements, duties and obligations for an aeronautical service provider as contained in the ordinance are applicable to Plane Safe, except those which pertain *only* to services that Plane Safe will not provide.

If there is any conflict between any provision in the Minimum Standards and this Agreement, the County, in its sole discretion, will determine which provision shall control.

ARTICLE 4 PERMITTED AERONAUTICAL SERVICES; NO EXCLUSIVITY

Plane Safe may perform the following, and only the following, aeronautical services at the Airport: (1) aircraft airframe, engine and accessory maintenance and repair. These services are more fully described in Section 9-63 of the Minimum Standards. Plane Safe agrees to perform these aeronautical services for the use and benefit of the public, and to furnish good, prompt and efficient service adequate to meet all demands for its service at the Airport.

Plane Safe does not have an exclusive right to perform these aeronautical services at the Airport, and no person or entity at the Airport is obligated to use any of the aeronautical services that Plane Safe provides.

Aircraft Service by Owner or Operator of Aircraft. It is expressly understood by Plane Safe that no right or privilege has been granted through this Agreement or otherwise which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services own its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

ARTICLE 5 ANNUAL FEE

For the privileges extended to Plane Safe by the County throughout this Agreement, Plane Safe shall pay the County an annual fee of \$250, payable upon execution of this Agreement. For each calendar year thereafter beginning January 1, 2015, payment shall be made on January 1, adjusted as follows:

For the year 2015 and each year thereafter, the annual fee shall be adjusted on the basis of the percentage by which the average of the United States Consumer Price Index-Urban (or its successor or replacement index) for the previous twelve calendar months ending June, 2014 increased over the average for the prior twelve calendar months ending June, 2013, except as follows: (1) If the percentage decreased, or if the percentage increased by less than 2.5%, the annual fee shall be increased by 2.5%, and (2) in no event shall the annual fee be increased by more than 7.5%. This same adjustment to the annual fee shall be made in the same manner for each succeeding year, including during any Extended Term.

Payments shall be delivered to the Airport Manager.

ARTICLE 6 RIGHTS AND PRIVILEGES

In addition to the other rights and privileges accorded to Plane Safe by this Agreement, Plane Safe shall be permitted to use, in common with others, existing and future aeronautical facilities at the Airport. This includes landing areas, roadways, aprons and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft. The County may augment, modify or delete any such facilities.

Plane Safe and its suppliers, service providers, customers, visitors and invitees have the right of ingress and egress to Plane Safe's subleased premises, subject to the rules and regulations of the Airport Manager.

ARTICLE 7 GENERAL OBLIGATIONS

Plane Safe shall not engage in any activity or business at the Airport, whether it is an aeronautical service or not, other than what is specifically allowed by this Agreement.

Plane Safe shall provide services in accordance with the requirements of the Minimum Standards for All Aeronautical Service Providers as set forth in Section 9-58 of the Minimum Standards and for Aircraft Airframe, Engine and Accessory Maintenance and Repair as set forth in Section 9-63 of the Minimum Standards, as those sections may be amended from time to time. Notwithstanding the foregoing, the County expressly agrees that, so long as Plane Safe's painting activities remain below any minimum levels set by the Federal Aviation Administration ("FAA") and the Occupational Safety & Health Administration ("OSHA") requiring the use of a segregated painting area, Plane Safe is exempted from the requirement of the Minimum Standards that an Aircraft Airframe, Engine and Accessory Maintenance and Repair Service Provider's building shall include a segregated painting area. Nevertheless, all painting activities shall at all times comply with all applicable federal, state and local requirements, including but not limited to those established from time to time by OSHA.

All services that Plane Safe provides must be performed by employees of Plane Safe. All employees shall be appropriately trained and shall meet the qualifications set forth in the Minimum Standards ordinance for the service that the employee provides. An employee may

provide more than one aeronautical service so long as the employee is trained for and meets the qualifications for each service.

Plane Safe shall observe and obey the rules and regulations governing the conduct and operations at the Airport as are promulgated from time to time by the Airport Manager.

Plane Safe shall comply with all laws of the United States and the State of Wisconsin, all applicable local ordinances, and all rules and requirements of any law enforcement, fire department or other municipal agency. At its expense, Plane Safe shall obtain any and all permits and license that may be necessary for any activity at the Airport for which a license or permit is required. If Plane Safe is notified of any activity that is in violation of or prohibited by any law, ordinance, rule, regulation, requirement, permit or license, it will immediately desist from the activity or cause it to be corrected. Failure to immediately correct the violation shall be grounds for termination of this Agreement.

The storage of flammable and combustible liquids in containers that have a capacity of greater than sixty gallons of liquid shall be limited to such areas as designated by the Airport Manager. The storage of flammable and combustible liquids in containers that have a capacity of sixty gallons or less of liquid shall be in an approved steel locker that is appropriately labeled. The Airport Manager may, in his discretion, prohibit or restrict the storage of such materials if he determines that the storage is a safety hazard. No hazardous chemicals, flammable liquid, combustible liquid and waste product of such materials may be disposed of on the Airport premises.

Plane Safe shall not create or permit any disturbance, noise, vibration or condition that would unreasonably interfere with the use of the Airport by others.

ARTICLE 8 COUNTY RIGHTS

To the extent necessary to protect the rights and interests of the County or to determine compliance with this Agreement and with the FBO Lease, the Airport Manager has the right to inspect the facilities, equipment and operations of Plane Safe, upon reasonable notice and only in a manner that does not unreasonably interfere with the operations.

The County has the right, but shall not be obligated, to develop or improve the landing areas and other parts of the Airport as it sees fit, without interference or hindrance.

The County has the right, but shall not be obligated, to maintain and keep in repair the landing area of the Airport and all publically owned facilities of the Airport, together with the right to direct and control all activities of Plane Safe in this regard.

The County has the right to take any action it considers necessary to protect the aerial approaches and transition surfaces of the Airport against obstruction.

During a time of war, national emergency, riot or natural disaster, the County shall have the right to lease the entire Airport or any part of it to the United States or the State of Wisconsin for military or National Guard use. In such event, any provision in this Agreement that is inconsistent with any provision in the government lease shall be suspended during the term of the government lease.

For the use and benefit of the public, the County has a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Airport, and the right to cause in this airspace any noise that may be inherent in the operation of aircraft, whether landing, taking off or otherwise.

ARTICLE 9 COUNTY AUDIT RIGHTS

Plane Safe shall allow the County, on reasonable notice and at reasonable times, to inspect and audit Plane Safe's books and papers for the purpose of determining compliance with this Agreement.

ARTICLE 10 INSURANCE

For each of the aeronautical services described in Article 4, Plane Safe shall provide the corresponding insurance as set forth in the Minimum Requirements for Aeronautical Services ordinance and its Schedule 1. Waukesha County and its boards, agencies, commissions, employees, officials, agents and representatives shall be named as additional insureds on all required coverages.

All required insurance coverages shall be maintained throughout the term of this Agreement. If any coverage will be reduced or cancelled, Plane Safe shall provide the County with not less than 30 days advance notice and shall obtain a new policy that will meet the insurance requirements.

When requested, Plane Safe shall provide the County with certificates of insurance that show that Plane Safe has met the requirements of this Article.

ARTICLE 11 NONDISCRIMINATION; EQUAL SERVICES AFFIRMATIVE ACTION

Plane Safe agrees that (1) no person on the grounds of race, sex, color, disability or national origin will be denied employment opportunities with Plane Safe or denied the services that Plane Safe will make available to the public or otherwise be discriminated against by Plane Safe, and (2) it will conduct its operations at the Airport 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, Nondiscrimination in Federally-

Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as amended from time to time.

In furnishing its services to the public, which it will do to all persons on a fair and equal basis, Plane Safe will charge fair, reasonable and not unjustly discriminatory prices for each unit of sale or service. Plane Safe may, however, make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers or classes of purchasers.

Plane Safe will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, sex, creed, color or national origin be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Plane Safe promises that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Plane Safe also promises that it will require that its covered suborganizations, if any, provide assurances to it that they will also undertake such affirmative action programs and require the same from their suborganizations, if any.

ARTICLE 12 HOLD HARMLESS AND INDEMNITY

Plane Safe will not hold the County liable for any damage to property or injury or death to person when such damage, injury or death is in any way related to Plane Safe's presence at the Airport or the services Plane Safe is allowed to perform at the Airport, unless the damage, injury or death was the result of an intentional or reckless act of the County.

If any demand, claim, lawsuit or proceeding is brought against the County and is in any way related to Plane Safe's presence at the Airport or the services Plane Safe is allowed to perform at the Airport, Plane Safe shall (1) fully defend the County against the demand, claim, lawsuit or proceeding, and (2) pay all expenses, costs, losses, damages, fees (including attorney fees), fines, forfeitures, judgments and awards that are a result.

The County shall give Plane Safe prompt notice of any demand, claim, lawsuit or proceeding as described in this Article. The County shall have the right, but not the duty, to investigate and settle any such demand, claim, lawsuit or proceeding and participate in the defense.

In this Article, "County" includes Waukesha County, the Waukesha County Airport Commission, and all of their employees, officers, officials, members and agents.

ARTICLE 13 ASSIGNMENT AND SUBCONTRACT

Neither this Agreement nor any part of this Agreement may be assigned or subcontracted to any person or entity without the prior, written consent of the County.

**ARTICLE 14
RELATIONSHIP OF PARTIES**

Nothing in this Agreement is intended to nor shall be construed as creating or establishing between the County and Plane Safe a partnership relationship, or to make Plane Safe the employee, agent, or representative of the County.

**ARTICLE 15
SUBORDINATION**

This Agreement shall be subordinate to the provisions of any existing or future agreement between the County and the United States government and all of its agencies and departments regarding the operation or maintenance of the Airport, the execution of which agreement has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport.

**ARTICLE 16
GOVERNING LAW; VENUE FOR DISPUTES**

This Agreement has been made in Wisconsin and shall be construed according to the laws of Wisconsin. Any lawsuit related to or arising out of disputes under this Agreement shall be commenced and tried in the circuit court of Waukesha County, Wisconsin, and the County and Plane Safe submit to the jurisdiction of such court for lawsuits.

**ARTICLE 17
NOTICES**

Notices to Plane Safe shall go to: Mr. Samuel K. Cryer, Plane Safe Aircraft Maintenance, Inc., 503 Bluemound Road, Waukesha, WI, 53188.

Notices to the County shall go to: Mr. Kurt S. Stanich, Waukesha County Airport, 2525 Aviation Drive, Waukesha, WI, 53188.

Dated this ___ day of _____, 2014
but effective as of December 11, 2013.

Dated this ___ day of _____, 2014
but effective as of December 11, 2013.

PLANE SAFE AIRCRAFT
MAINTENANCE, INC.

WAUKESHA COUNTY

By: _____
Samuel K. Cryer
President

By: _____
Kurt S. Stanich
Airport Manager

FISCAL NOTE

APPROVE PLANE SAFE AIRCRAFT MAINTENANCE, INC OPERATING
AGREEMENT

This ordinance would approve a contract between the Waukesha County Airport and Plane Safe ("Plane Safe") Aircraft Maintenance, Inc., to allow Plane Safe to perform aircraft airframe, engine and accessory maintenance and repair work for airport users. However, airport users would not be obligated to use Plane Safe for maintenance and repair needs. The term of the contract is through December 11, 2018, with two subsequent five-year extensions allowable. The agreement requires Plane Safe to pay the County an annual fee of \$250 for the privilege of providing these services at the Airport. Beginning in 2015, the annual fee will be adjusted for inflation (increases of no less than 2.5% and no higher than 7.5%).



Lawrence M. Dahl
Accounting Services Manager
3/18/2014

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE 04/08/14

(ORD) NUMBER-1680115

1
 3 R. MORRIS.....
 5 J. BRANDTJEN.....AYE
 7 J. GRANT.....AYE
 9 J. HEINRICH.....AYE
 11 F. RUF.....AYE
 13 P. DECKER.....AYE
 15 W. KOLB.....AYE
 17 D. PAULSON.....AYE
 19 C. CUMMINGS.....AYE
 21 W. ZABOROWSKI.....AYE
 23 K. HAMMITT.....AYE
 25 G. YERKE.....AYE

2 D. Zimmermann.....AYE
 4 J. BATZKO.....AYE
 6
 8 P. HAUKOHL.....AYE
 10 D. SWAN.....AYE
 12 P. WOLFF.....AYE
 14 P. MEYER.....AYE
 16 M. CROWLEY.....AYE
 18 L. NELSON.....AYE
 20 T. SCHELLINGER....AYE
 22 P. JASKE.....AYE
 24 D. DRAEGER.....AYE

TOTAL AYES-22

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS ~~_____~~

TOTAL VOTES-22