

**CHATHAM MUNICIPAL AIRPORT
MANAGEMENT SERVICE AGREEMENT**

This agreement, made this FIRST day of FEBRUARY, 2007, by and between the Town of Chatham, represented by the Chatham Airport Commission and the Town Manager, on behalf of the inhabitants of the Town of Chatham, hereinafter the "Town," and Cape Cod Flying Circus, Inc., hereinafter the "Manager." There is no lease of real estate involved in this agreement. This is a service contract only.

WITNESS AS FOLLOWS:

COPY

1. TERM

- a. The Town contracts for the management of the Airport, located in West Chatham, MA, for the term of ten (10) years from the first day of January 2007 to the first day of January 2017, with an option to extend for another ten-year period if satisfactory agreement can be reached by the Town and Manager. The fee paid to the Town for the first year of this agreement will be twenty-five thousand dollars (\$25,000), payable in monthly installments beginning the first day of the month after the signing of this agreement and each month thereafter. An increase of three and one-half percent (3.5%) will be effective on each yearly anniversary date.

In the event that the fee is not received by the Airport Commission by the fifteenth (15th) of any month, the Town reserves the right to impose a late penalty of five (5) percent of the unpaid monthly installment, and in the event the fee has not been received by the thirtieth (30th) of any month in which due, it shall constitute a default under the agreement and the Town may take any action it deems necessary thereafter, including termination of this agreement.

All income derived from the operation of the Airport will accrue to the Manager.

It will be the Managers obligation to provide all routine housekeeping and maintenance for the structures on Airport premises in a usable condition. Further, the Manger is responsible for keeping the active aircraft operating areas (runway, taxiways, taxi lanes, and aprons) free of debris and sand. The Town will be responsible for major structural repairs or damage due to fire or other acts of nature.

The Manager will maintain all Town-owned airport equipment such as the truck, plow, tractor, and all attachments thereto, as instructed in the manufacturers specifications. Repairs and service are to be paid by the Airport Commission. The Manager will provide the Airport Commission a semiannual report of the condition of this Town-owned equipment.

Any alterations to the property owned by the Town of Chatham and the construction of any new structures will only be allowed by written consent of the Airport Commission and shall become the property of the Town of Chatham at no cost to the Town. Any structures added by the Manager will conform to the latest laws, rules, regulations, building codes, and policies imposed by governmental bodies having jurisdiction, and any such structures at the termination of the agreement will belong to the Town at no cost.

- b. The Manager shall be allowed to issue aviation service-related concession agreements. Each such agreement shall terminate upon the termination of this Management Service Agreement. All such concession agreements shall be approved in writing by the Town before they become effective. In no event shall a concession agreement be issued with a termination agreement later than the termination of this Management Agreement. The Town reserves the right to relocate and/or to approve or disapprove the location of any concession operation. Concession agreements shall not contain exclusive use provisions. Concession agreements shall contain provisions for insurance acceptable to the Town, naming the Town as co-insured.
- c. The Manager shall be allowed exclusive control of the main building and attached hangars, the green T-Hangar building, and the existing fuel farm as shown on the attached Plan showing said facilities. However, the Town shall continue to use areas within said buildings for offices and Commission meetings as it now uses such space. Any assignment of area space within said buildings to concessionaires by the Manager shall be subject to prior approval of the Airport Commission.

2. MANAGERS COVENANTS

The Manager agrees:

- a. To pay the said monthly management fees at the times and in the manner aforesaid.

- b. To provide the Airport Commission annual reports of Cape Cod Flying Circus, Inc., income.
- c. To operate said Airport in accordance with the standards set by the Federal Aviation Administration (FAA), the Massachusetts Aeronautics Commission (MAC), and any rules and Town of Chatham airport minimum standards or bylaws of the Town of Chatham.
- d. The Manager recognizes and agrees that neither this Agreement nor any aviation related concession agreements permit or grant exclusive use rights.
- e. To pay all utility costs including water, electricity (excluding runway lights, PAPI, and other outdoor lighting), gas, telephone, and hold the Town harmless from any liability on account thereof.
- f. To pay all taxes, insurance premiums, and all other charges against the stock and fixtures, all inventory and other personal property on the airport premises belonging to the manager during the term of this Agreement or any renewal or extension thereof.
- g. To insure and keep insured in the name of the Manager and the Town the following insurance coverage in the following amounts:

Public Liability Insurance: In an amount not less than one million dollars (\$1,000,000) for personal bodily injury.

Property Damage Insurance: In an amount not less than five hundred thousand dollars (\$500,000) for damage as a result of any one accident and in an amount not less than one million dollars (\$1,000,000) for damages as a result of all accidents.

Workers' Compensation Insurance: The Manager shall be required to provide Workers Compensation Insurance in accordance with Massachusetts State Law to all persons employed by it under this Agreement.

Product Liability: The Manager carry product liability on fuel, naming the Town as co-insured at its sole expense with limits which can be mutually agreed upon by the Town and the Manager.

Copies of the policies of insurance shall be delivered by the Manager to the Town at the signing of this Agreement and an annual Certificate of Insurance evidencing such coverage shall be submitted to the Town. All above policies shall name the Town of Chatham as co-insured.

- h. Grant access to agents of the Town for the purpose of reviewing the premises to ensure compliance under this Agreement or to show the Airport to persons who may wish to enter into a Management Service Agreement with the Airport Commission at the end of this Agreement or any extension thereof.
- i. The Manager agrees that fuel and oil will be available from 8:30 a.m. until the end of normal business hours, considered to be 5:00 p.m., seven (7) days a week, year round on Visual Flight Rules (VFR) days. Fuel availability will be at a minimum of 100LL, and 80 Octane shall also be available if it can reasonably be procured.
- j. The Manager agrees to perform all janitorial grounds keeping services and maintain and provide, in consideration of public safety, adequate lighting as required for the premises at no expense to the Town.
- k. The Manager agrees to provide for and maintain an airport emergency contingency plan, perform safety inspections with the necessary notices of unsafe operating conditions to the Town and to the FAA for notices to airmen. The Town agrees to cooperate with the Manager in planning and implementing such plans.
- l. The Manager shall be responsible for securing the premises during nonbusiness hours, including all gates affording entry to the premises.
- m. The Manager may use a fuel truck to refuel aircraft on the apron or tie down areas with prior approval of the Town.

3. MINIMUM STANDARDS

The Manager accepts the following as minimum standards allowable during the term of this Agreement.

- a. All minimum requirements of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautical Commission (MAC) as amended will be implemented.

- b. If it is determined to be feasible, the Manager may have available air charter facilities as provided in FAR 135. These facilities do not necessarily have to be provided by the Managers equipment or personnel.
- c. The Manager shall provide aircraft and facilities on a year-round basis for flight training and sightseeing flights. This does not necessarily have to be provided by the Managers equipment or personnel.
- d. The Manager shall provide facilities and qualified personnel to perform maintenance on what is known as light aircraft. This does not necessarily have to be provided by the Managers equipment or personnel.
- e. Regardless of weather, the field shall be visited and inspected at least once a day. A daily inspection log will be maintained in the Managers office. The existing SWPPP log could be modified and used for this purpose.
- f. The Manager will be responsible for monitoring vehicular and pedestrian traffic on the Airport property. At the end of each business day, all vehicular gates shall be closed and locked. The Manager will put in place a system that allows tenants access to their aircraft after business hours. The Manager will not overload any parts of the premises as to weights or other capacities so as to cause damage to any parts of the premises.
- g. The Manager will employ a qualified, under Massachusetts Aeronautics Commission Rules, Airport Manager during the entire term of this Agreement. Said Manager or his representative will attend all regular Airport Commission meetings and present a written report of the activities at the Airport for the previous month. Such report shall include any matter that has or might cause a legal and/or operation problem involving the Airport or the Town of Chatham.
- h. The Manager agrees to have a hazardous waste or material removal plan that ensures compliance with all applicable Federal and State requirements.
- i. The Manager is responsible for implementing the provisions of the Stormwater Pollution Prevention Plan (SWPPP), which includes, but is not limited to, monitoring water quality/runoff and making the results of that monitoring available to environmental oversight personnel. The Manager shall also be responsible for performing any other SWPPP-related duties as required.

- j. The Manager will be responsible for supplying the labor/manpower to perform grass cutting and snow plowing with Town-supplied equipment. The manager shall be responsible for controlling the growth of the underbrush on the airport premises. The Manager shall be responsible for snow clearing all taxiways and paved parking areas, excluding the main runway. The town will be responsible for supplying snow removal equipment and labor for the main runway within 24 hours of snowfall completion.

Should the Manager not comply with these minimum standards for a period of seventy-two (72) hours after notice of noncompliance, the Town may terminate this Agreement at its option.

4. COVENANTS AND AGREEMENTS ON THE PART OF THE TOWN

At the termination of this Agreement, the Town will give the Manager ten (10) days in which to remove all merchandise and equipment belonging to the Manager which the Manager shall so remove.

- a. The Town agrees to provide and maintain storage and dispensing facilities for aviation gasoline. The Manager agrees to pay for any dispenser maintenance such as, but not limited to, pump hoses, nozzles, gauges, filters required for such facilities.
- b. Suitable fencing will be provided at the beginning of the term by the Town.
- c. The Town will maintain all aviation-related items such as runway lights, rotating beacon, wind cone, sock, PAPI, VHF, CTAF/UNICOM radio system or any other navigational aids installed and owned by the Town.
- d. The Town is responsible for removing large obstructions such as trees on the premises that would hamper the safe operation of the facility.
- e. The Town agrees to perform non-FAA or State navigation facilities maintenance repair and paved surfaces maintenance for the premises. This will include runway lights, taxiway lights, signage, pavement markings, VHF CTAF/UNICOM radio system, rotating beacon, and lighted windsock.

5. MUTUAL COVENANTS AND AGREEMENTS BY THE TOWN AND THE MANAGER

a. Destruction Clause

The Manager and the Town hereby covenant and agree that:

1. if any buildings and other property of the Town on the premises covered under this Agreement shall incur damage or be destroyed, such that the operation of the Airport is substantially reduced, the Town may repair and/or rebuild the same upon the same plan as immediately before such damage or destruction occurred;
2. if any buildings or other property of the Town on said Airport property is destroyed or damaged to the extent of ten percent (10%) or more of its market value, either party may cancel the Agreement by giving the other party written notice within thirty (30) days of the date of said damage or destruction.

b. Notice

Any notice from one party to the other shall be in writing and shall be deemed to be duly given when provided personally or mailed postpaid, or by fax, addressed to the respective addresses below.

Airport Commission
Town of Chatham
549 Main Street
Chatham, MA 02633
Fax: 508-945-3550

Cape Cod Flying Circus, Inc.
240 George Ryder Road
Chatham, MA 02633
Fax: 508-945-9599

The Manager may change said addresses by mailing to the Town notice of the change at least ten (10) days previous to said change.

c. Damage of Personal Property on Premises

All merchandise, fixtures, effects, and property of every kind, nature, and description of the Manager in and/or on the Airport premises shall be at the

sole risk and hazard of the Manager and no part of such loss or damage is to be charged to or be borne by the Town unless the damage/loss is caused by structural defect or the failure of the Town to make structural repairs after notice from the Manager.

d. Liens

The Manager shall not do or suffer anything to be done whereby the land and any building of the Town may be encumbered by any liens except as herein authorized, and shall, whenever and as often as any lien is filed against such property, discharge the same of record within ten (10) days after the date of filing. Notice is hereby given that the Town shall not be liable for any labor or materials furnished or to be furnished to the Manager upon credit.

e. Conditions of Premises

While this Agreement remains in force, the Manager will keep and maintain said premises at all times in a safe and good condition and repair, ordinary depreciation from reasonable use excepted, and to keep premises neat and clean on a continuing basis.

f. Construction

No construction shall take place on the premises without written consent of the Town, which shall not be reasonably withheld. The Manager shall provide the Town, within reasonable advance notice, of intent to construct, together with such plans and specifications as the Town may reasonably require.

g. Regulations

The Manager agrees to comply with all state, federal, and local environmental, land use, and other regulations applicable to the Manager, the Town, and the premises.

h. Waste Disposal

No waste material or refuse shall be dumped on or be permitted to remain on the Airport premises, outside of any building thereon. The Manager shall be responsible for trash disposal.

i. Signs

No billboards, signs, or other exterior advertising shall be erected or permitted on the premises except with the written consent of the Town, provided however that the Manager may erect a sign identifying the concessionaire, which sign must be in compliance with the Town of Chatham Sign Code.

j. Fences and Walls

No fences, walls, or hedges may be placed on the Airport premises without consent in writing of the Town, which consent will not be unreasonably withheld.

- k. During such times the Airport is closed to air traffic due to runway reconstruction, ramp reconstruction, fuel farm replacement, or other such revenue impacting construction, the Manager's monthly installment payment will be reduced by an appropriate sum being pro-rated for each day the access to the Manager's business is affected.

6. EQUAL OPPORTUNITY PROVISION

- a. The Manager, for itself, its employees, agents, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

1. no person, on the grounds of race, color, national origin, or sex shall be excluded from participation, 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 of the Airport and the furnishing or service thereon, no person on the grounds of race, color, national origin, or sex shall be excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination;
3. the Manager shall use 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 Effectuation of Title VI of the Civil Rights Act of

1964 and as said regulations may be amended.

- b. In the event of a breach of any of the above nondiscrimination covenants, the Town shall have the right to terminate the Agreement.
- c. The Manager shall furnish its own accommodations and/or services on a fair, equal, or not unjustly discriminatory prices for each unit or service; PROVIDED that the Manager be allowed to make reasonable and nondiscriminatory discounts, rebates, and other similar types of price reductions to volume purchasers.
- d. Noncompliance with Provision 3, above, shall constitute a material breach of the Agreement, and in the event of such noncompliance, the Town shall have the right to terminate this Agreement, or at the election of the Town or the United States, either or both said Governments shall have the right to judicially enforce provisions 1, 2, and 3.
- e. The Manager assures that it will undertake an affirmative action program as required by 14 CFR, part 152, Subpart E, to ensure that no person shall, on the basis of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR, part 152, Subpart E. The Manager assures 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 the Subpart. The Manager assures that it will require that its sub-organizations provide assurance to the Manager that they similarly will undertake affirmative action programs and that they will require assurance from their sub-organizations, as required by 14 CFR, part 152, Subpart E, to the same effect.
- f. The Manager agrees that it shall insert the above five (5) provisions in any agreement, contract, or other instrument by which said Manager grants a right or privilege to any person, firm, or corporation to render accommodations and/or the premises.

7. RIGHTS OF THE TOWN


- a. The Town reserves the right to further develop or improve the Airport and its landing area as it sees fit, regardless of the desires or views of the Manager and without interference or hindrance.


- b. This Agreement shall be subordinate to the provisions and regulations of any existing or future Agreement between the Town and the United States or Commonwealth of Massachusetts, relative to the development, operation, or maintenance of the Airport.
- c. The Manager agrees to comply with the notification and review requirements covered in Part 77 of the Code of Federal Regulations in the event any future structure or building is planned for the premises or in the event of any planned modification or alteration of any present or future building or structure situated on the premises.
- d. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of section 308 of the Federal Aviation Act.
- e. There is hereby reserved to the Town, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for the navigation or flight through the said airspace or landing at, taking off from, or operation on the Chatham Municipal Airport.
- f. The Manager, by accepting this Agreement, expressly agrees that it will not erect or permit the erection of any structure or object on the premises that might interfere with Airport operational safety. In the event the aforesaid covenants are breached, the Town may enter the premises and remove the offending structure or object, all of which shall be at the expense of the Manager.
- g. The Manager, by accepting this agreement, agrees that it will not make use of the premises in any manner which might interfere with the landing and taking off of aircraft from the Chatham Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Town may cause the abatement of such interference at the expense of the Manager.
- h. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said Airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.


This Agreement may only be assigned with approval of the Town of Chatham.


IN WITNESS THEREOF, said Town and Manager have caused this Agreement to be duly executed the date first written above.

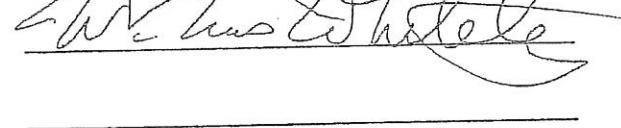
FOR THE TOWN OF CHATHAM
CHATHAM AIRPORT COMMISSION



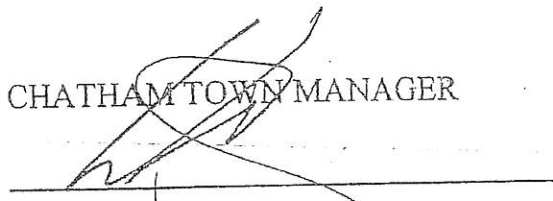




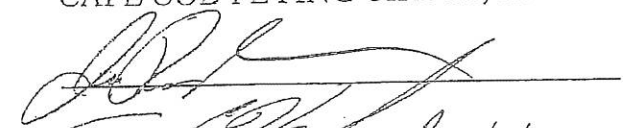


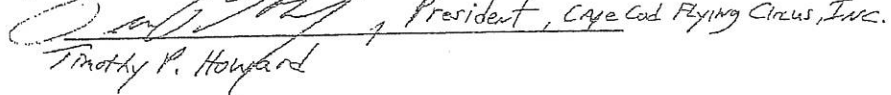


CHATHAM TOWN MANAGER



CAPE COD FLYING CIRCUS, INC.:





Timothy P. Howland, President, Cape Cod Flying Circus, Inc.

APPROVED AS TO FORM:



Bruce P. Gilmore, Chatham Town Counsel