

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA BY THE
CITY OF MINNEAPOLIS, et al.,

CASE TYPE: Civil Other

Plaintiffs,

Case No. 27-CV-05-005474

v.

Judge Bridget Sullivan

METROPOLITAN AIRPORTS COMMISSION,

Defendant, and

NORTHWEST AIRLINES,

Defendant-Intervenor.

THIRD AMENDMENT TO CONSENT DECREE

WHEREAS, the City of Minneapolis, City of Richfield, City of Eagan, Minneapolis Public Housing Authority (collectively, the “Cities”), and the Metropolitan Airports Commission (the “MAC”) (hereafter, the “Parties”) are parties to a consent decree entered by this Court on October 19, 2007, and amended by this Court on September 25, 2013, and on January 31, 2017 (the “Consent Decree”);

WHEREAS, on September 25, 2013, by agreement of the Parties, this Court adopted the First Amendment to this Consent Decree, which created a refined noise mitigation plan described in the final MSP 2020 Improvements Project Environmental Assessment/Environmental Assessment Worksheet for existing homes that entered into the 60-62 DNL and 63-64 DNL for exterior noise for three consecutive years with the first year beginning before 2020;

WHEREAS, the MAC and the Cities requested this Court adopt the Second Amendment to this Consent Decree (the “Second Amendment”);

WHEREAS, on January 31, 2017, this Court adopted the Second Amendment, which (a) refined the noise mitigation plan outlined in this Consent Decree by providing for the use of the most recently released Federal Aviation Administration (FAA) noise modeling software, and (b) revised the opt-out eligibility provisions of the MAC's noise mitigation program;

WHEREAS, no more homes will become eligible for mitigation pursuant to the First Amendment to the Decree since there were zero qualifying homes per the 2020 contour map as prepared by MAC under section 8.1(d) of the Consent Decree, 2020 was the last year to begin accruing eligibility, and the First Amendment program will close on December 31, 2024;

WHEREAS, the Cities continue to allege that failure to provide noise mitigation to existing homes within the 60 DNL for exterior noise surrounding the Minneapolis-St. Paul International Airport ("MSP"), whether or not the interior noise level in a residence is below 45 DNL, violates the Minnesota Environmental Rights Act (MERA), the Minnesota Environmental Policy Act, and/or a local standard established by the Metropolitan Council;

WHEREAS, MAC continues to deny any legal violation has occurred as a result of its failure to provide noise mitigation;

WHEREAS, the Parties desire to extend the core provisions of the noise mitigation program established in the Consent Decree, as amended, in order to provide noise mitigation for all future eligible homeowners and to avoid, to the extent possible, future claims related to noise at MSP;

WHEREAS, Section 8.1(j) and Section 8.7 of the Consent Decree allow the Cities and the MAC to modify the Consent Decree by mutual agreement and in writing;

WHEREAS, this amendment will be submitted to the FAA Office of Chief Counsel for a legal determination regarding its consistency with federal requirements regarding the use of airport revenue;

NOW THEREFORE, upon (a) receipt of a written determination by the FAA Office of Chief Counsel that use of airport revenue to fund the programs contemplated by this Amendment is permitted, and (b) approval of this Third Amendment (“Amendment”) by the Court, the Consent Decree shall be amended as follows:

1. The Consent Decree is hereby modified to add the following language after Section 9.9:

X. NOISE MITIGATION PROGRAM COMMENCING JANUARY 1, 2022

10.1 Goal of the Program. The MAC’s goal in adopting the noise mitigation program in Section X of this Consent Decree is to minimize the environmental impacts on residents in communities adjacent to MSP, consistent with the unique noise characteristics associated with air carrier aircraft operations. The Cities’ goal for participating in this program is to ensure that mitigation is provided to impacted homes while continuing to advocate for noise prevention and reduction.

10.2 Duration of the Program. The noise mitigation program in Section X of this Consent Decree will commence on the latter of January 1, 2022, or the date this Amendment is approved by both the Court and the FAA. The program will terminate on December 31, 2032.

10.3 Noise Contours and Program Eligibility Assessment. The MAC will determine eligibility for the program based upon noise contours the MAC develops under Section 8.1(d) of this Consent Decree using the FAA’s Aviation Environmental Design Tool (AEDT) or the most recently released version of any subsequent FAA modeling software system the FAA uses in

preparing environmental review documents. The MAC will assess eligibility for noise mitigation under the program annually based upon the Section 8.1(d) contours prepared for the previous calendar year. The first actual noise contour for this Amendment will be the 2021 noise contour prepared by the MAC no later than March 1, 2022. The last noise contour for this Amendment will be the 2030 noise contour prepared by the MAC no later than March 1, 2031.

10.4 Eligibility Criteria. The owner of a Single-Family or Multi-Family home, as those terms are defined in Section 4.27 and Section 4.16, respectively, of this Consent Decree, will be considered eligible for mitigation under the noise mitigation program in Section X of this Consent Decree if the following criteria are met: (a) the community in which the home is located—including but not limited to communities located within the City of Minneapolis, City of Richfield, or City of Eagan—has adopted local land use controls and building performance standards applicable to the home for which mitigation is sought that prohibit new residential construction, unless the construction materials and practices are consistent with the local land use controls and heightened building performance standards for homes within the 60 DNL Contour within the community in which the home is located, and (b) the home is located, for a period of three consecutive years, with the first of the three years beginning no later than calendar year 2028, (i) in the actual 60-64 DNL noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree, and (ii) within a higher noise impact mitigation area when compared to the Single-Family home's status under the noise mitigation programs for Single-Family homes provided in Sections 5.1, 5.2, 5.3, and 9.5 of this Consent Decree or when compared to the Multi-Family home's status under the noise mitigation programs for Multi-Family homes provided in Section 5.4 and 9.6 of this Consent Decree. The noise contour boundary will continue to be based on the block intersect methodology stated in 4.9, 4.10, and 4.18 in this Consent Decree. There is

no requirement that the interior noise level in any Single-Family or Multi-Family home receiving mitigation under Section X of this Consent Decree be above 45 DNL. The MAC will offer noise mitigation under Section X of this Consent Decree to owners of eligible Single-Family homes and Multi-Family homes in the year following the MAC's determination that a Single-Family or Multi-Family home is eligible for noise mitigation under this Section.

10.5 Single-Family Home Mitigation Package.

(a) If a Single-Family home is in the 63 or higher DNL annual noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree or its subsequent amendments for three consecutive years, the Single-Family home will be eligible for the Five-Decibel Reduction Package, as that term is defined in Section 4.11 of this Consent Decree.

(b) If a Single-Family home is in the 60-62 DNL annual noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree for three consecutive years, the Single-Family home will be eligible for one of two mitigation options, to be selected by the owner of the home. The two mitigation options are: (1) if no central air conditioning exists in the home as of January 1, 2022, the MAC will install central air conditioning and provide a total not to exceed \$4,000 (in 2007 dollars) of noise mitigation products and services from the Mitigation Menu, as that term is defined in Section 4.14 of this Consent Decree, including reasonable and customary installation costs; or (2) if central air conditioning exists in the home as of January 1, 2022, or if central air conditioning does not exist in the home as of January 1, 2022, but the homeowner chooses not to receive central air conditioning, the MAC will provide a total not to exceed \$14,000 (in 2007 dollars) of noise products and services from the mitigation services from the Mitigation Menu, as that term is defined in Section 4.14 of this Consent Decree, including reasonable and customary installation costs. Any reimbursement or mitigation improvements previously provided by the

MAC under this Consent Decree or under any other noise mitigation program will be deducted from the above-listed options.

10.6 Multi-Family Home Mitigation Package. Multi-Family homes in the 60-64 DNL annual noise contours prepared by the MAC under Section 8.1(d) of this Consent Decree that meet the Eligibility Criteria of Section 10.4 will be eligible for the Multi-Family Home Mitigation Package as defined in Section 4.17 of this Consent Decree.

10.7 Tolling of Three-Year Eligibility Period. If, as the result of any extraordinary event arising from causes beyond the control of any Party hereto, including but not limited to a pandemic, the total combined number of Airport Operations at MSP, as determined by the FAA, are reduced on a calendar-year basis by thirty (30) percent or more compared to the calendar year immediately preceding the calendar year during which the extraordinary event commenced (the “Pre-Tolling Year”), the running of the three-continuous-year homeowner eligibility periods described in Sections 10.4, 10.5(a) and 10.5(b) shall be tolled during the entirety of any calendar year in which operations are so reduced and shall resume in the calendar next year in which operations are not so reduced; provided, (a) the maximum duration for which any homeowner eligibility period may be tolled under this Section 10.7 is two years, which must be consecutive years, (b) a homeowner shall be limited to one tolling period of up to two years, and (c) this Section 10.7 shall not apply to any home that has not already accrued at least one year of homeowner eligibility under Section 10.4, 10.5(a) or 10.5(b), which must include the Pre-Tolling Year. For purposes of this Section 10.7, “Airport Operations” means the number of arrivals and departures from the MSP Airport.

10.8 Termination of Eligibility. Notwithstanding anything to the contrary in this Consent Decree or its Amendments, no Single-Family or Multi-Family home shall be eligible for the noise mitigation program in Section X of this Consent Decree unless (a) for homes that gain full

eligibility on or before March 1, 2030, a homeowner has executed a signed noise-mitigation work agreement with the MAC prior to September 30, 2031, or (b) for homes that gain full eligibility on March 1, 2031, a homeowner has executed a signed noise-mitigation work agreement with the MAC prior to June 30, 2032; provided, the MAC may, for good cause shown, extend the deadline for homeowners to execute a signed noise-mitigation work agreement with the MAC.

10.9 Opt-Out Eligibility. Single-Family and Multi-Family homes that previously opted out of or did not participate in noise mitigation programs previously established under this Consent Decree or the First Amendment are not eligible to participate in the mitigation program provided under this Section. Opting out, for the purposes of this section, does not include failing to participate in the 2005 DNL 60-64 contour partial reimbursement program provided for in Section 5.3 (e), (f) and (g). Further, notwithstanding any previous opt-out, Single-Family homes that previously opted out of the partial mitigation program provided in Section 10.5(b), Section 9.5(b), or Section 5.2 may participate in the mitigation program provided in Section 10.5(a) if the Single-Family home meets all of the requirements for participation set forth in Section 10.5(a).

10.10 Releases from Homeowners. The MAC may require owners of Single-Family and Multi-Family homes receiving noise mitigation under Section X of this Consent Decree to sign a release in the form substantially similar to the release used previously by the MAC in its Part 150 noise mitigation program.

10.11 Release and Waiver. The Cities and any other communities participating in the noise mitigation program under Section X of this Consent Decree hereby waive any claims relating to aircraft noise from MSP under the Minnesota Environmental Rights Act (MERA) or any other legal theory, subject to the exceptions stated in Section 8.1 of this Consent Decree. Nothing in this Release and Waiver, or in this Consent Decree and any amendments thereto, diminishes the Parties'

right to pursue claims against non-Parties. By adopting the noise mitigation program under Section X of this Consent Decree, the MAC is not conceding that it has created an environmental quality standard, limitation, rule, order, license, stipulation agreement or permit.

Entered this 18th day of April, 2022

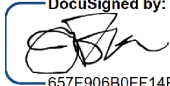


Bridget A. Sachin

District Court Judge

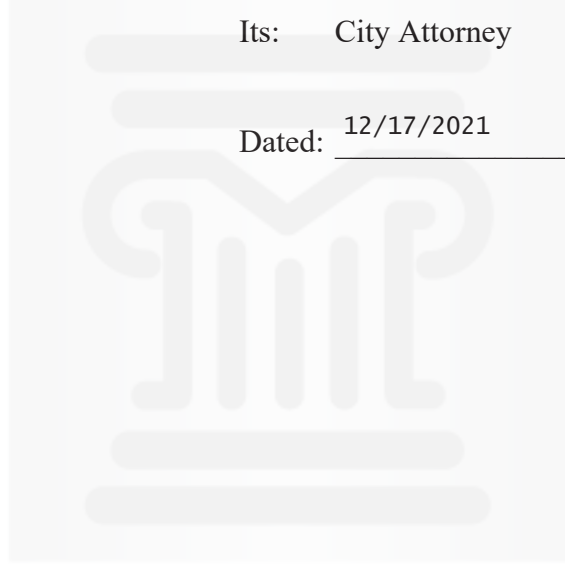
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FOR THE CITY OF MINNEAPOLIS

By:  _____
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Jim Rowader

Its: City Attorney

Dated: 12/17/2021 _____



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FOR THE CITY OF RICHFIELD

By: *Maria Regan Gonzalez*
Maria Regan Gonzalez

Its: Mayor

Dated: 12 1 2021

By: *Katie Rodriguez*
Katie Rodriguez

Its: City Manager


Dated: 12 1 2021

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FOR THE CITY OF EAGAN

By: 
Mike Maguire, Mayor

Date: 12/7/21

By: 
Beth VanHoose, City Clerk

Date: 12-7-2021

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27-CV-05-005474

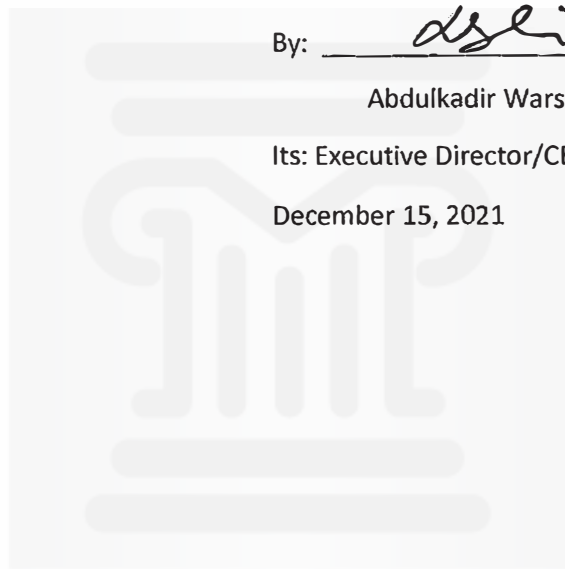
FOR THE MINNEAPOLIS PUBLIC HOUSING AUTHORITY IN AND FOR THE CITY OF MINNEAPOLIS

By: *dsli*

Abdulkadir Warsame

Its: Executive Director/CEO

December 15, 2021



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THIRD AMENDMENT TO CONSENT DECREE

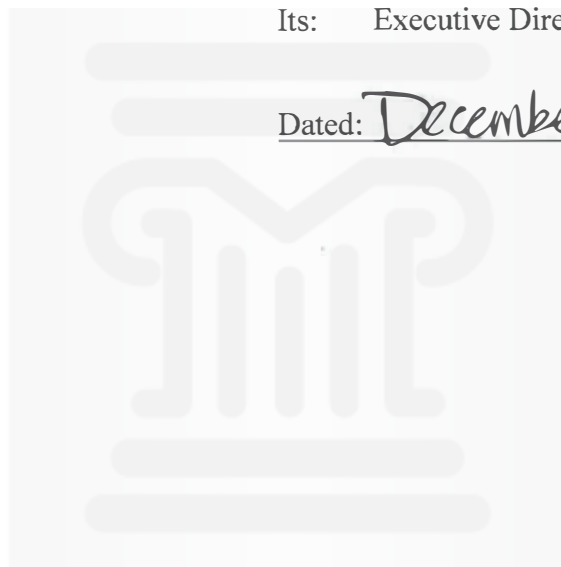
FOR THE METROPOLITAN AIRPORTS COMMISSION

By: 

Brian Ryks

Its: Executive Director/CEO

Dated: December 20, 2021



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