

USE AND FACILITY MANAGEMENT AGREEMENT BETWEEN  
LA CROSSE COUNTY CONVENTION AND VISITORS BUREAU FOR THE USE OF  
410 VETERANS MEMORIAL DRIVE

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This Use Agreement and Facility Management Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the **City of La Crosse**, a Wisconsin municipal corporation through its Board of Park Commissioners (hereinafter referred to as "**City**") and **La Crosse County Convention and Visitors Bureau, Inc.** a Wisconsin non-stock Corporation (hereinafter referred to as "**LCCVB**") and effective the first day of February, 2020.

**WHEREAS**, the La Crosse Area Convention and Visitors Bureau, Inc. was an occupant under a long term agreement with the City for the use and occupancy of 410 Veterans Memorial Drive, in the City of La Crosse, County of La Crosse, State of Wisconsin for its offices and support operations.

**WHEREAS**, by virtue of a merger of assorted tourism entities, the La Crosse County Convention and Visitors Bureau, Inc. was formed and took over occupancy of the premises;

**WHEREAS**, the use agreement between the La Crosse Area Convention and Visitors Bureau, Inc., has expired and no new use agreement was entered into with the LCCVB for the occupancy and use of the premises;

**WHEREAS**, the parties wish to formalize an agreement under which LCCVB is authorized to use the premises for an office, tourism center;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of the parties hereto, IT IS AGREED that LCCVB is granted an exclusive privilege to use the building and the first floor of the detached garage located at 410 Veterans Memorial Drive. The garage may be used for storage and for such as other purposes as allowed by City ordinances, provided any use is in compliance with any City, State or Federal codes, laws, regulations or ordinances. This Use Agreement is, subject to the following terms and conditions:

**1. Definitions.**

- A. Substantial Repair. The term, "substantial repair" shall mean any repair or replacement to any mechanical system (heating, plumbing, electrical, HVAC), structural repairs or roof repairs which would reasonable interfere with LCCVB's use of the premises for the purpose set forth in this Agreement.
- B. Park Board. "Park Board" means the City of La Crosse Board of Park Commissioners.

- C. LCCVB Board. "LCCVB Board" means the Board of Directors of the La Crosse County Convention and Visitors Bureau, Inc.
- D. Premises. "Premises" is defined as the City owned building at 410 Veterans Memorial Drive, the first floor of the detached garages, plus the non-exclusive use of the adjacent parking lot. A floor plan of the property being referenced under this Agreement is attached hereto as Appendix "A" and incorporated herein by this reference.

**2. Term.** This Agreement, unless earlier terminated as provided for herein, shall be effective for the time period 12:01 am on February 1, 2020 through 5:00 pm on January 31, 2021.

**3. LCCVB Responsibilities.**

- A. LCCVB shall provide all staff necessary for any and all events held at the premises, including any events or programs.
- B. City will be responsible for the removal of exterior ice and snow from any sidewalks and walkways. City will also be responsible for the removal of exterior ice and snow from any and all parking areas and any weed removal.
- C. LCCVB shall be responsible for all Premises' maintenance and all daily operation's expenses at the Premises. Any substantial repairs in excess of \$1,000.00 per occurrence shall be the expense of the City. The payment of any such repairs and/or expenses shall be subject to funding and approval by the City, unless such substantial repair has been caused by the action, inaction, negligence or acts of LCCVB, or its guests, attendees, users, employees, volunteers, invitees, contractors or repair persons.
- D. LCCVB shall supply all necessary cleaning supplies and labor to maintain in a safe, clean and sanitary condition for all public or private areas, public restrooms and any other area used by the LCCVB.
- E. LCCVB shall be responsible for all trash removal and recycling.
- F. LCCVB will pay for all personal property taxes assessed for LCCVB's use and/or management of Premises or any equipment used or owned by LCCVB, unless LCCVB is determined to be tax-exempt.
- G. LCCVB, if not already done, shall have all utilities transferred into their name and shall pay all utilities, including, without limitation, water and sanitary service, electric, gas, storm water, phone, internet or any other utility expense, when due.

#### **4. City Responsibilities.**

- A. The City will maintain and pay for a Service Agreement covering the mechanical systems if available, in the City's sole discretion. As set forth in paragraph 3(D) above, any repairs to the mechanical systems excess of \$1,000.00 per occurrence shall be the expense of the City. The payment of any such repairs and/or expenses shall be subject to funding and approval by the City, unless such substantial repair has been caused by the action, inaction, negligence or acts of LCCVB, or its guests, attendees, users, employees, volunteers, invitees, contractors or repair persons.
- B. The City will provide an incremental breakdown of the utility services which are the responsibility of the LCCVB and substantial repair expenses incurred by the City.

#### **5. Fees, Revenue, Use restriction.**

- A. Rent.
  - 1) LCCVB shall pay the City One Thousand Twelve Hundred and 00/100 Dollars (\$1,200.00) per month during the term of this Agreement, commencing February 1, 2020. Rent will be due the 1<sup>st</sup> day of every month, paid to the City of La Crosse and deposited in the Riverside Park Improvement Fund In addition to any other remedy available to the City, delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month. The Park Board further is charging a security deposit of Three Thousand and 00/100 Dollars (\$3, 000.00) to protect the City against any and all expense related to the Premises that are to be paid by LCCVB.
  - 2) LCCVB may not lease advertising space at the Premises.
  - 3) Naming rights. The City retains all naming rights to the Premises.
  - 4) For any emergency, flooding or disaster related events, the City may use the facility at no charge.

#### **6. Assignment and Subcontracting.**

- A. Except as provided herein, LCCVB shall not assign this Agreement or any interest therein, nor let or underlet the Premises, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof for any other purpose without the advance written consent of the Park Board.

#### **7. Indemnification.**

- A. To the fullest extent allowable by law, LCCVB hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives and volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after the usage of the Premises and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to by reason of any act, omission, fault, or negligence, whether active or passive, of LCCVB or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. LCCVB's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.
- B. In any and all claims against the City, its elected and appointed officials, officers, employees, authorized representatives or City volunteers by an employee of LCCVB, LCCVB itself, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for LCCVB or any LCCVB under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.
- C. No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the Premises is located.
- D. LCCVB shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, LCCVB's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

## **8. Insurance.**

- A. Unless otherwise specified in this Agreement, LCCVB shall, at its sole expense, maintain in effect at all times during the usage of the Premises, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
- B. Workers Compensation and Employers Liability Insurance. LCCVB shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. LCCVB shall provide statutory coverage for work-related injuries and employer's liability insurance with limits of at least for employers' liability of One Hundred Thousand (\$100,000.00) for each accident, One Hundred Thousand (\$100,000.00) for each employee and Five Hundred Thousand (\$500,000.00) for total policy limit.
- C. Commercial General Liability, Liquor Liability and Automobile Liability Insurance. LCCVB shall provide and maintain the following commercial general liability and automobile liability insurance: Coverage.
  - 1) Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
    - a) Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
    - b) Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)
  - 2) Limits commencing July 1, 2016. LCCVB shall maintain limits no less than the following commencing on July 1, 2016:
    - a) General Liability. One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate, if applicable, for bodily injury, personal injury and property damage.
    - b) Automobile Liability. One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
    - c) Umbrella Liability. Six Million and 00/100 Dollars (\$6,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.
    - d) The City reserves the right to adjust the above limits, in accordance with recommendations of the City's underwrites and insurance advisors. If the same are adjusted, LCCVB agrees to adjust their limits to comply with the same.
  - 3) Required Provisions. The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- a) The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of LCCVB; products and completed operations of LCCVB; premises occupied or used by LCCVB; and vehicles owned, leased, hired or borrowed by LCCVB.
- b) The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each policy shall contain a waiver of subrogation endorsement in favor of the City.
- c) For any claims related to this Agreement or usage of the Premises, LCCVB's insurance shall be primary insurance as respects to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- d) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.
- e) LCCVB's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f) Each insurance policy required by this Agreement shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or LCCVB, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
- g) Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, LCCVB for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- h) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability and completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
- i) All of the insurance shall be provided on policy forms and through companies satisfactory to the City and shall have a minimum AM Best's rating of A-VI".

D. Deductibles and Self-insured Retentions. Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

1) Evidences of Insurance. Prior to execution of the Agreement, LCCVB shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

2) Sub-Users. Any party that uses Premises, under any agreement with the LCCVB, must provide to the City insurance under the minimum standards set forth herein, naming the City as an additional insured. LCCVB is responsible for insuring that each sub-user meets the insurance requirements specified herein.

#### **9. Default and Termination.**

A. In the event LCCVB shall default on any of the amounts due to the City as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments or conditions herein contained, and any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof to LCCVB or (a) LCCVB shall make an assignment of its property for the benefit of creditors, or (b) LCCVB shall petition a court to be adjudged bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against LCCVB for more than thirty (30) days, or (d) if LCCVB be judicially determined to be insolvent, or (e) LCCVB shall be adjudged bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of LCCVB's property or to wind up or liquidate its affairs, or (g) if LCCVB shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) LCCVB shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered against LCCVB and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if LCCVB shall abandon the facility, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against LCCVB, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this

B. Agreement and all rights of LCCVB hereunder. Cancellation shall not constitute a cancellation or a waiver by the City of the remainder of the total amounts payable to City or for any damages or losses for the unexpired portion of the demised term which may be sustained by the City on account of such default, assignment, insolvency, adjudication, or other default as provided hereinabove in this Section,

including any expenses incurred in exercising its rights in this Agreement. In the event of lapse of insurance policies or coverage and protection as required by this Agreement, the City may, without notice of default, declare this Agreement terminated. LCCVB shall have no access rights to or use of Premises unless all insurance policies required by this Agreement are in full force and effect.

- C. In the event of termination of this Agreement for default, LCCVB may make no claim for compensation for the capital improvements furnished and the City shall retain title and ownership of the said Premises, together with all buildings and improvements thereon, without any payment whatsoever to LCCVB. No improvements or buildings shall be removed from the above-described Premises during the term of this Agreement without the written consent of the City, except any equipment, trade, and/or personal property of LCCVB which LCCVB lawfully removed prior to the termination of this Agreement.
10. **Impossibility of Performance.** Neither the City nor LCCVB shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
11. **Damage and Destruction of the Premises.** In the case of the destruction or any substantial damage of the Premises resulting from fire or other casualty, either City or LCCVB may terminate this Agreement upon written notice to the other, if the building cannot be repaired or rebuilt by City within thirty (30) days.
12. **Ownership and Control.** LCCVB states that as of the date of signing of this Agreement, the members of the Board of Directors and the Officers of the LCCVB, which are disclosed on the attached Exhibit "A" which is incorporated herein by this reference as if set forth in full. On an annual basis, on or before the fifteenth (15<sup>th</sup>) day of June of each year, this disclosure signed and authenticated by the officers of the Board of Directors of the LCCVB will be provided to the City.
13. **Compliance with All Laws.** LCCVB shall, at its own cost and expense, be responsible to promptly comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and municipal governments and of any and all other governmental authorities or agencies affecting the Premises or its use, and LCCVB shall, at their own cost and expense, make all additions, alterations or changes to the Premises or any portion thereof as may be required by a governmental authority or agency.
14. **Code Compliance.**
- A. Annually. Without limitation, the following codes or their successor codes must be met annually or the Agreement will be in default:
- 1) City of La Crosse permits

- 2) Health Department & City permits for any food and beverage operations
- 3) Fire department inspection requirements

B. Environmental. LCCVB shall, during the entire term of this Agreement, comply with all applicable federal, state, and local environmental laws, ordinances and amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, waste, nuisance, pollution control\* hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the foregoing laws, regulations and requirements are hereinafter referred to as Environmental Laws.

C. LCCVB shall obtain all environmental licenses, permits, approvals, authorizations, exemption classifications, certificates and registrations (hereinafter collectively referred to as Permits) and make all applicable filings required of LCCVB under the Environmental Laws. The Permits and required filings shall be made available for inspection and copying by City at LCCVB's offices upon reasonable notice and during business hours. LCCVB shall not cause or permit any flammable explosive, oil, contaminant, radioactive material hazardous waste or material, toxic waste or material or any similar substance (hereinafter collectively referred to as Hazardous Substances) to be brought upon, kept or used in or about the Premises, except for small quantities of such substances as is necessary for the business upon the Premises, provided that LCCVB shall handle, store, use and dispose of any such Hazardous Substance in compliance with all applicable laws and in a manner which is safe and does not contaminate the Premises.

D. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of any Hazardous Substance on or about the Premises by any occupant of the Premises during the Agreement, then the reasonable costs thereof shall be reimbursed by City to LCCVB upon demand. LCCVB shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Premises. LCCVB shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning LCCVB's best knowledge and belief regarding the presence of Hazardous Substances on the Premises. LCCVB agree to indemnify and hold the City harmless from any liability, claim or injury, including attorney fees and the cost of any required or necessary repair, clean-up, remediation or detoxification, arising out of (i) the use, manufacture, handling, storage, disposal or release of any Hazardous Substances by LCCVB, its agents and employees and any subtenant and its agents and employees on, under or about the Premises, or (ii) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Premises by LCCVB or any occupant of the Premises or the operation of LCCVB's business on the Premises during the term of the Agreement. The foregoing indemnification shall survive the expiration or earlier termination of this Agreement.

E. The City has not been informed of any code violations for the Premises covered by this Use Agreement. The LCCVB or its predecessors in interest have been using and

occupying the Premises for in excess of thirty (30) years. Any costs in order to be in compliance with codes or laws, as set forth above, for the LCCVB to continue to use the premises for these ongoing purposes is the responsibly of the LCCVB and is not limited by the amounts set forth in paragraph 3(D) above. If the LCCVB receives notice of any repair or renovation expenses, in order to remain in code compliance as to any state, federal or municipal laws, ordinances or regulations, that in the aggregate, will exceed Five Thousand and 00/100 Dollars (\$5,000.00), the LCCVB may terminate this Use Agreement upon sixty (60) days advance written notice to the City.

**15. City's Right of Entry and Inspection.**

- A. Right of Entry. City shall have the right to enter the Premises at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Agreement.
- B. Inspection of Records. The City may also request any and all records from LCCVB, at no cost, upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement
- C. Public Records. LCCVB understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, LCCVB agrees to retain all records as defined by Wisconsin Statute S 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. LCCVB agrees to assist the City in complying with any public records request that the City receives pertaining to this Agreement. Additionally, LCCVB agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from LCCVB's actions or omissions which contribute to the
- D. City's inability to comply with the Public Records Law. In the event that LCCVB decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive the termination of this Agreement.

**16. Alterations and Improvements.**

- A. Structural changes. LCCVB shall not make, or suffer to be made, any structural alterations or improvements of the Premises without the prior review and the written consent of the Board of Park Commissioners. All such alterations or improvements shall be made in accordance with any applicable local, state and federal laws and regulations. Any additions to, or alterations of, the real property improvements shall become at once a part of the realty and belong to the City. If written consent of the City to any proposed alterations shall have

been obtained, LCCVB agrees to advise the Park Board in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. LCCVB shall further provide verification of the alterations' or improvements' value to the City Engineer, City Assessor and City Finance Director.

B. Liens. LCCVB shall keep the Premises free from any and all liens arising out of any work performed, materials furnished or obligations incurred by LCCVB. Upon request, LCCVB shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the Premises or portion thereto. In the event such liens or encumbrances exist, then LCCVB shall obtain a release of the same or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15) day notice from the City.

17. **Abandonment.** LCCVB agrees not to vacate or abandon the Premises at any time during the Agreement. Should LCCVB vacate or abandon the Premises or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of the Agreement; and, in addition to any other rights which the City may have, the City may remove any personal property belonging to LCCVB which remains in the Premises and store and dispose of the same, such removal, storage and disposal to be at the expense of LCCVB.

18. **Notices.** All notices to be given to the City and LCCVB shall be in writing, and either personally delivered or deposited in the United States Mail, certified or registered, with postage prepaid, and addressed as follows:

**To LCCVB:**

LCCVB  
c/o Director  
401 Veterans Drive  
La Crosse, WI 54601

**To the City:**

Attn: City Clerk  
City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

**With a copy to:**

Attn: Director of Parks and Recreation  
City of La Crosse 400 La Crosse St  
La Crosse, WI 54601

19. **No Third-Party Beneficiary.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

20. **Independent Contractor.** The parties hereto agree they are acting as independent contractors, and nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating, a partnership, joint venture, or any such mutual relationship between the parties. Each party shall be responsible for its own separate debts, obligations and other liabilities.

21. **Construction.** This Agreement shall be construed and interpreted under the laws of the State of Wisconsin. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. This Agreement may not be amended except in writing and approved by both parties.

22. **Governmental Approvals.** LCCVB acknowledges that several of the specific undertakings of the City described in this Agreement may require approvals from the City of La Crosse Common Council, City of La Crosse governing bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. LCCVB further acknowledges that this Agreement, if it requires the expenditure of any funds is subject to appropriation by the La Crosse Common Council. The City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

23. **Patents, Trademarks, Copyrights and Royalties.** LCCVB assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment devices, processes or dramatic rights used in their conduct and agree to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials, equipment, devices, processes or dramatic rights by LCCVB or its employees, agents, or licensees.

24. **Jury Trial Waiver.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby

authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

25. **Governing Law.** This Agreement and all questions and issues arising in connection herewith shall be governed by and constructed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the La Crosse County, Wisconsin. Each party waives its right to challenge venue.

26. **Severability.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to person or circumstances other than those to which it is declared invalid or unenforceable shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.

27. **Title to be retained by City.** City shall retain title and ownership of the Premises together with all buildings and improvements thereon without any payment whatsoever to LCCVB.

28. **Non-Discrimination.** In the performance of the services under this Agreement, LCCVB agrees not to discriminate against any employee, subcontractor or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.

29. **Entire Agreement.** The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.

30. **No Waiver.** No failure to exercise and no delay in exercising of any right, power or remedy hereunder on the part of the City shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy, No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

31. **Authority.** The persons signing this Agreement warrant they have the authority to sign as, or on behalf of, the party for whom they are signing.

32. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective

when one or more counterparts have been signed by each of the parties and delivered to the other parties.

33. **Holdover.** Should LCCVB remain in possession of any part of the Leased Premises after the expiration or other termination of this Lease, without extending the term or executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Notwithstanding, rent for any holdover tenancy shall be calculated as three (3) times the rental value as defined in Wis. Stat. § 704.27. Rental value shall be determined by the City's Assessor, in his/her sole and absolute discretion.

WITNESS:

LCCVB, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

LCCVB, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of La Crosse

WITNESS:

Board of Park Commissioners

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_