



City of La Crosse, Wisconsin

**Scheduled Airline Operating Agreement
and Terminal Building Lease**

La Crosse Regional Airport
Scheduled Airline Operating Agreement
and Terminal Building Lease

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**LA CROSSE REGIONAL AIRPORT
SCHEDULED AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

This Scheduled Airline Operating Agreement and Terminal Building Lease, hereinafter called "AGREEMENT", made and entered into this _____ day of _____, 2013, by and between the City of La Crosse, Wisconsin, a subdivision of the State of Wisconsin, hereinafter called "CITY", and *Delta Air Lines* _____ a corporation organized and existing under the laws of the State of *Georgia* and authorized to do business in the State of Wisconsin, hereinafter called "AIRLINE".

WITNESSETH:

WHEREAS, CITY is owner and operator of La Crosse Regional Airport (Airport) located in La Crosse, Wisconsin, and has the right to lease portions of the Airport and to grant operating privileges thereon subject to the terms and conditions hereinafter set forth; and

WHEREAS, AIRLINE is a corporation primarily engaged in the business of providing Air Transportation of persons, property, cargo, and mail; and

WHEREAS, AIRLINE desires to lease certain premises within the Terminal Building Area, use certain facilities at the Airport, and acquire certain rights and privileges from CITY in connection with its use of the Airport and CITY is willing to lease and grant same to AIRLINE under terms and conditions hereinafter stated; and

WHEREAS, CITY has the power and authority to enter into this agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and considerations herein contained, CITY and AIRLINE agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions

The terms and phrases defined in this Article 1 for all purposes of this Scheduled Airline Operating Agreement and Terminal Building Lease shall have the following meanings.

- (A) "Affiliated Airline"** shall mean any air transportation company that is (i) a parent or subsidiary of AIRLINE, or (ii) shares an International Air Transport Association (IATA) flight designator code with AIRLINE at the Airport (Code-Sharing Partner), or (iii) otherwise operates under essentially the same trade name as AIRLINE at the Airport and uses essentially the same livery as AIRLINE; provided that no major airline, as such term is defined by the FAA, shall be classified as an Affiliate of another major airline, unless either clause (i) or (iii) above defines the relationship between such airlines at the Airport. Affiliate shall have the rights afforded AIRLINE without payment of any additional charges or premiums provided AIRLINE (a) remains a signatory to this Agreement, and (b) agrees and shall be obligated to serve as a financial guarantor for all charges incurred by any Affiliate of AIRLINE at the Airport. Although they may billed separately, AIRLINE and any Affiliate shall be counted as one airline for the purposes of computing any shared use, common use or joint use charges; provided, however, that AIRLINE shall be responsible for the actions and any and all unpaid charges of (including the payment of any activity fees incurred by) any such Affiliate while such Affiliate operates at the Airport."
- (B) "Air Carrier Airport Requirement"** shall mean the sum of Rates and Charges due in a Calendar Year from Airlines for Terminal Building Airline Rent and Landing Fee Charges as described in Article 5.
- (C) "Air Transportation"** shall mean the carriage of persons, property, cargo, and mail by aircraft.
- (D) "Airline Premises"** shall mean AIRLINE's Exclusive Use Space and Joint Use Space.
- (E) "AIRLINE's Authorized Representative"** shall mean such person designated by AIRLINE in writing to the Manager prior to the commencement of the term hereof and from time-to-time during the term hereof setting forth the name, title and authority of such person.
- (F) "Airport"** shall mean the La Crosse Regional Airport, as it now exists as shown on Exhibit A, or as it may hereafter be modified, changed or developed from time-to-time.
- (G) "Airport Cost Centers"** shall mean direct cost areas to be used in accounting for Airport Revenues, Operation and Maintenance Expenses, Capital Expenditures and financing costs and for calculating and adjusting rentals and fees described herein, as shown on Exhibit A, and which taken together comprise the Airport, as more particularly described below:
- (1) "Airfield Area"** shall mean those areas on the Airport, as shown on Exhibit A, as they now

exist or as they may hereafter be modified, changed, or developed, that provide for the landing, takeoff taxiing, parking, servicing, ground handling or other operations of aircraft. The Airfield Area includes, without limitation, the runways, taxiways, aircraft parking aprons, approach and clear zones, safety areas, infield areas, landing and navigational aids, and other facilities and land areas at the Airport required by or related to aircraft operations.

(2) "Terminal Building Area" shall mean the terminal building serving airlines and other related businesses, access roads, parking areas, rental car ready/return and service areas, and other areas surrounding the terminal building, as shown on Exhibit A, as such areas currently exist, or as they may hereafter be relocated, constructed, modified, changed or developed from time-to-time.

(3) "Other Aeronautical Areas" shall mean those portions of the Airport used for aeronautical purposes not considered part of the Airfield Area or Terminal Building Area Cost Centers, including the facilities, installations, and improvements thereon, as shown on Exhibit A, as they now exist or as they may hereafter be modified, changed or developed.

(4) "Other Non Aeronautical Buildings and Areas" shall mean those portions of the Airport not included in the preceding Airport Cost Centers, including the facilities, installations, and improvements thereon, as shown on Exhibit A, as they now exist or as they may hereafter be modified, changed or developed.

(H) "Airport Purpose" shall mean any action or undertaking by CITY directly relating to the development and preservation of the Airport for air commerce.

(I) "Airport Revenue" shall mean any income and revenue lawfully derived directly or indirectly by the CITY from the operation and use of, or otherwise relating to, the Airport. The term does not include any grants, passenger facility charges, appropriations, loans, gifts or bond proceeds from federal, state or local governments.

(J) "Annual Budget" shall mean the budget of CITY pertaining to the Airport for any Calendar Year.

(K) "Calendar Year" shall mean the period of twelve (12) months ending with the last day of December of any year.

(L) "Capital Improvement" shall mean any single item having a net cost in excess of fifty thousand dollars (\$50,000) acquired, purchased, or constructed to improve, maintain, or develop the Airport, as well as any extraordinary or substantial expenditure whose object is to preserve, enhance, or protect the Airport. Capital Improvements include without limitation

(1) the acquisition of land or easements;

- (2) the purchase of machinery, equipment, or vehicles;
- (3) the planning, engineering, design, and construction of new facilities;
- (4) noise insulation or other noise mitigation measures; and
- (5) other environmental mitigation measures.

(M) "Effective Date for Rentals and Fees" shall mean January 1, 2014 the date upon which Article 6 rentals and fees shall become effective.

(N) "Exclusive Use Space" shall mean, at any time, the space leased by CITY to AIRLINE on an exclusive use basis as more fully set forth on Exhibit A and Exhibit B, as the same may be amended from time-to-time.

(O) "FAA" shall mean the Federal Aviation Administration of the U.S. Government or any federal agency succeeding to all or part of its jurisdiction.

(P) "Fiscal Year" shall mean the then current annual accounting period of the City of La Crosse for its general accounting purposes which , as of January 1, 2014, is the period of twelve (12) months ending with the last day of December of any year.

(Q) "Joint Use Formula" shall mean the formula used to prorate one hundred percent (100%) of the specified charge for Joint Use Space according to the ratio of the number of each airline's enplaning passengers at the Airport during the most recent calendar month for which such information is available to the total number of enplaning passengers of all airline users of the service or space during that same calendar month. Joint Use Formula may also mean any other formula as may be agreed upon by all Signatory Airlines using the service or space.

(R) "Joint Use Space" shall mean, at any time, the premises leased or used jointly by AIRLINE and one or more other airlines, as more particularly set forth on Exhibit A and Exhibit B, as the same may be amended from time-to-time.

(S) "Manager" shall mean the de jure or de facto Airport Manager of CITY, designated as such by CITY. The word also means the de jure or de facto chief assistant of that official or the acting airport manager, if any, of CITY whenever the airport manager is unable to act in such capacity, or the successor of the airport manager in functions, if any.

(T) "Maximum Certificated Gross Landing Weight" shall mean the maximum landing weight certificated by the FAA, in one thousand (1,000) pound units, of each aircraft landed by AIRLINE at the Airport.

(U) "Nonsignatory Airline" shall mean any airline providing scheduled or unscheduled service to the Airport which is not a Signatory Airline.

- (V) "Operations and Maintenance Expenses"** shall mean all reasonable and necessary current expenses of CITY, paid or accrued, for operating, maintaining, and repairing the Airport including administrative expenses, depreciation on airport funded capital improvement expenditures and other CITY expenses reasonably allocated to the Airport.
- (W) "Passenger Facility Charge" or "PFC"** shall mean any passenger facility charge which CITY may impose upon passengers enplaning at the Airport pursuant to 14 CFR Part 158, as it may be amended or superseded from time-to-time.
- (X) "Public Areas"** shall mean at any time those Terminal Building areas not leased on an exclusive or joint use basis, or otherwise, to any person, company, or corporation.
- (Y) "Requesting Airline"** shall mean a scheduled Airline desiring to provide new or increased commercial air transportation service at the Airport, or to provide a change of aircraft for existing service for which the scheduled Airline does not have appropriate facilities at the Airport.
- (Z) "Rules and Regulations"** shall mean those lawful, reasonable and nondiscriminatory rules and regulations promulgated by CITY or operating directives issued by the Manager for the orderly use of the Airport by both the airlines and other tenants and users of the Airport as same may be amended, modified, or supplemented from time-to-time.
- (AA) "Signatory Airlines"** shall mean those airlines, including code sharing, Affiliated Airlines or wholly owned subsidiaries of such airlines, providing Air Transportation to and from the Airport that have executed substantially similar agreements to this Agreement, including term, with CITY covering the lease, use, and occupancy of facilities at the Airport. Except as otherwise provided herein, no Signatory Airline shall have any right pursuant to this Agreement to object to CITY's entry into a Scheduled Airline Operating Agreement and Terminal Building Lease with any other airline.
- (BB) "Terminal Project Improvement Reserve Fund"** shall mean the account identified on the City of La Crosse accounting records designated as available to pay for 2014-2016 terminal building improvement projects.
- (CC) "Total Landed Weight"** shall mean the sum of the Maximum Certificated Gross Landing Weight for all Signatory Airline arrivals for a relevant Calendar Year. Said sum shall be rounded up to the nearest one thousand (1,000) pound unit for all Landing Fee computations.
- (DD) "TSA"** shall mean the Transportation Security Administration of the U.S. Government or any federal agency succeeding to all or part of its jurisdiction.

Section 1.2 Cross-References

All references to articles, sections, and exhibits in this Agreement pertain to material in this Agreement, unless specifically noted otherwise.

Section 1.3 Construction of Certain Words

Words used in this Agreement may be construed as follows:

(A) Number-Words used in the singular include the plural, and words used in the plural include the singular.

(B) Tense - Words used in the present tense include the future.

ARTICLE 2

TERM

Section 2.1 Term

This agreement shall become effective on January 1, 2014, and shall extend for a period of 36 months, subject to earlier termination as specified in Article 12 hereof. Additionally, a onetime option to extend this lease 12 months (from January 1, 2017 to December 31, 2017) is available upon written agreement by both parties 60 days prior to expiration of firm term.

Section 2.2 Holding Over

If AIRLINE remains in possession of the leased premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement, but shall create only a tenancy from month to month that may be terminated at any time by CITY or AIRLINE upon 30 days written notice by either party. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement.

ARTICLE 3

RIGHTS AND PRIVILEGES

Section 3.1 Use of the Airport

AIRLINE, its employees, passengers, guests, patrons, and invitees shall have the right to the use (in common with other duly authorized users) of the Airport and its appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at, or in connection with, the Airport, subject to the Rules and Regulations of CITY.

Section 3.2 Specific Rights of AIRLINE at the Airport

AIRLINE shall have the right, in addition to all rights elsewhere granted in this Agreement, but subject to the Rules and Regulations and Ordinances of CITY to use the Airport for the

following purposes:

- (A)** The operation of an Air Transportation business by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.
- (B)** The landing, taking off flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment of, or operated by, AIRLINE, or other certificated Air Transportation companies with which CITY has an agreement, including the right to provide or handle all or part of the operations or services of such other companies, all of which are subject to CITY's Rules and Regulations.
- (C)** The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as AIRLINE may desire to use in the operation of its Air Transportation business, or that of other certificated Air Transportation companies with which CITY has an agreement.
- (D)** The ground training at the Airport of persons and testing of equipment, such training and testing to be limited to that incidental to AIRLINE's Air Transportation business at the Airport; provided that nothing in this paragraph shall preclude AIRLINE and CITY from entering into separate agreements for training at the Airport.
- (E)** The purchase of AIRLINE's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by AIRLINE from any person or company of AIRLINE's choice, and the making of agreements with any person or company of AIRLINE's choice for services to be performed by AIRLINE that are incidental to the operation of AIRLINE's Air Transportation business. Nothing herein shall restrict CITY from levying a reasonable and non-discriminatory concession fee on any person or company providing property or services to AIRLINE that are not incidental to AIRLINE's Air Transportation business.
- (F)** The sale, disposal, and exchange of AIRLINE's aircraft, engines, accessories, and other equipment, and materials or supplies, provided that such right shall not be construed as authorizing the conduct of a separate regular business by AIRLINE, but as permitting AIRLINE to perform only such functions as are incidental to the operation of its Air Transportation business.
- (G)** The servicing by AIRLINE, or by its suppliers of materials, or its furnishers of services, of aircraft and other equipment operated by AIRLINE or by other Air Transportation companies with which AIRLINE has an applicable agreement to provide handling or servicing, line maintenance, or other materials or supplies, at assigned aircraft parking positions or other locations designated by the Manager.
- (H)** The installation and operation of identifying signs, posters, and graphics on AIRLINE's

leased premises, subject to the prior written approval of the Manager.

- (I) The installation, maintenance, and operation of radio, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport as may be necessary or convenient in the opinion of AIRLINE for its operations; provided that**
 - (1) the location of such equipment and facilities shall be subject to the prior written approval of the Manager,**
 - (2) the use and location of such equipment and facilities shall not conflict with other similar equipment and facilities on the Airport, and**
 - (3) the location of such equipment and facilities on the Airport shall be subject to payment of such reasonable and nondiscriminatory fee or rental charge established by CITY for such location on the Airport by AIRLINE.**

- (J) The installation, maintenance, and operation of computer data lines, telephone communications equipment and associated conduits, and telephone communications switchgear and support computers at suitable locations on the Airport, as may be necessary or convenient in the opinion of AIRLINE for its operations; provided that**
 - (1) the location of such equipment shall be subject to the prior written approval of the Manager, if such location is not included in AIRLINE's Exclusive Use Space;**
 - (2) the use and location of such equipment shall not conflict with other similar equipment on the Airport, and**
 - (3) the location of such equipment (other than conduit and cable) on the Airport shall be subject to payment of such reasonable and nondiscriminatory fee or rental charge established by CITY for such use of space on the Airport by AIRLINE unless such space is already leased to AIRLINE.**

Section 3.3 Limitations on Use by AIRLINE

In connection with the exercise of its rights under this Agreement, AIRLINE shall not:

- (A) Do, or permit to be done, anything within its control at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, water system, electrical system, heating system, natural gas system, air conditioning system, fire protection system, sprinkler system, alarm system, or fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.**

- (B) Do, or permit to be done, upon the Airport any act or thing within its control that will invalidate or conflict with any fire or other casualty insurance policies (copies of which, together with premium schedules, shall be furnished to AIRLINE on request) covering the**

Airport or any part thereof

- (C)** Dispose of, or permit any other person within its control (including service contractors) to dispose of, any waste material taken from, or products used (whether liquid or solid) with respect to, its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by equipment installed with the approval of the Manager for that purpose.
- (D)** Keep or store within the enclosed portion of the premises, during any twenty-four (24) hour period, flammable liquids in excess of AIRLINE's working requirements during said 24 hour period, except in storage facilities specially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters, and approved by the Manager from the standpoint of safety.
- (E)** Do, or permit to be done, upon the Airport any act or thing within its control that will be in conflict with Federal Aviation Regulations Part 139 or jeopardize the Airport's operating certificate.
- (F)** Do, or permit to be done, any act or thing within its control in conflict with the Airport's security plan provided that the security plan is not in conflict with any FAA or TSA mandates.
- (G)** To the extent within AIRLINE's control, do or permit to be done any act, or let any condition exist, which is in conflict with Environmental Protection Agency rules, regulations or directives.
- (H)** Do, or permit to be done, at the Terminal Building Area heavy maintenance (i.e., engine changes, control surface replacements, overhauls) within AIRLINE's control, providing that suitable, reasonably accessible space is available for such purpose.

ARTICLE 4

PREMISES

Section 4.1 Terminal Building Area Space

- (A)** AIRLINE hereby leases the following areas (hereinafter referred to as AIRLINE's "Exclusive Use Space", and "Joint Use Space") in the Terminal Building Area being more particularly delineated on Exhibit A and Exhibit B, as the same may be amended from time-to-time:

Exclusive Use Space
Ticket Counter
Offices

Joint Use Space

Security Holdrooms
Inbound Baggage
Outbound Baggage

- (B)** AIRLINE shall use its Exclusive Use Space for office purposes and the sale of Air Transportation, handling, ticketing, billing, and manifesting of passengers, baggage, cargo, property, and mail in the conduct of its Air Transportation business or on behalf of any other Air Transportation company authorized by the Manager to use the Airport.
- (C)** AIRLINE shall use the Joint Use Space for purposes designated for such space by the Manager, which shall include but is not limited to:
- (1)** baggage claim (delivery and display of inbound passenger baggage),
 - (2)** passengers awaiting delivery of their baggage,
 - (3)** tug cart circulation and baggage loading and unloading, and
 - (4)** checking-in and boarding of passengers.

Section 4.2 Surrender of the Premises

CITY shall not be required to give notice to quit possession of the premises leased hereunder upon expiration of the term of this Agreement. AIRLINE covenants and agrees that, on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, it will peaceably surrender possession of the premises leased hereunder in good condition, reasonable wear and tear, acts of God, fire, and other casualties excepted, and CITY shall have the right to take possession of said premises. AIRLINE shall have the right on termination, and within thirty (30) days thereafter, to remove all trade fixtures, equipment, and other personal property installed or placed by it at its expense, in, on, or about the Airport, except that AIRLINE's right shall be subject to any valid lien that CITY may have thereon for unpaid rentals or fees.

AIRLINE shall not abandon any of its property on the premises without the prior written consent of the Manager. Any and all property not removed by AIRLINE within the thirty (30) day period, except as otherwise mutually agreed upon by the parties hereto, shall thereupon, at the option of CITY, become a part of the land on which it is located, and title thereto shall vest with CITY. All CITY property damaged by, or as the result the removal of AIRLINE's property shall be restored by AIRLINE, at its own expense, to the condition existing prior to such damage reasonable wear and tear excepted or according to such other arrangement to which City and AIRLINE may agree.

Section 4.3 Accommodation of New and/or Existing Airlines

- (A)** It is recognized by AIRLINE and CITY that from time to time during the term of this

Agreement it may become necessary for the AIRLINE to accommodate another Airline ("Requesting Airline") within its Premises or for CITY unilaterally to require AIRLINE to accommodate another Airline(s) within AIRLINE's Premises in furtherance of the public interest of having the Airport's capacity fully and more effectively utilized, as follows:

- (1)** To comply with a rule, regulation or order of any federal, state or other governmental agency that has jurisdiction over CITY.
- (2)** To implement a Capital Improvement at the Airport
- (3)** To facilitate the providing of new or additional air services at the Airport by a Requesting Airline when no Airline serving the Airport is willing to accommodate the Requesting Airline's operational needs or requirements for facilities at reasonable costs or on other reasonable terms.

(B) When responding to subsection 4.3A(1) of this Article, CITY will request accommodation through an expedited procedure that will allow compliance with the rule, regulation or order. The request for accommodation will be made based on an evaluation of the most cost effective and least disruptive alternative.

Within ten (10) days of a written notice of its intent to require accommodation, AIRLINE must accept the request or notify CITY that it wishes to meet and show cause why the accommodation should not be made.

If CITY elects to proceed with accommodation after meeting with AIRLINE, CITY shall give AIRLINE not less than thirty day's notice to accomplish the accommodation.

(C) In responding to a request for facilities from a Requesting Airline under subsection 4.3A(2) or subsection 4.3A(3) of this Article, CITY shall:

(1) First advise the Requesting Airline to attempt to obtain access to existing Airport capacity through one or more of the following alternatives:

(i) To lease vacant space, if any is available, from CITY; or

(ii) To enter into a sublease or ground handling agreement with an existing Airline other than AIRLINE at the Airport, subject to the approval of CITY.

(2) When requested to do so by CITY and only if the alternatives set forth in 4.3C(1) of this Article are not available, AIRLINE agrees to use reasonable efforts to accommodate the Requesting Airline's requirements through joint use of its facilities or through a sublease or passenger handling or ground handling agreements. AIRLINE, in offering joint use of its facilities or offering to sublease or ground handling agreement to the Requesting Airline, is not required to provide facilities to the Requesting Airline that would be incompatible with AIRLINE's (including Affiliated Airline's) own reasonable

schedule of operations or the operations of any other Airline(s) being accommodated by AIRLINE at the time of the Requesting Airline's request. AIRLINE may, in connection with such accommodation, require the Requesting Airline to remove any of its aircraft from the relevant gate if the aircraft's continued presence would be incompatible with AIRLINE's (or an Affiliated Airline's) reasonable requirements for use of the gate.

- (3)** CITY shall have the right to authorize other Airlines to use AIRLINE's ticket counter, and loading bridge when such facilities are not required for AIRLINE's (or those of a code share AIRLINE partner not in default of its obligations to CITY) scheduled flight activities. Subject to a mutually acceptable agreement between CITY and AIRLINE covering such use, AIRLINE shall have the right to charge reasonable fees and to require reasonable advance payment for such use of AIRLINE's ticket counter and loading bridge (and any such fees not in excess of 115% of the rates and charges payable by AIRLINE hereunder for such premises shall be deemed reasonable). Also, AIRLINE shall have the right to require the Requesting Airline(s) to indemnify AIRLINE against liability arising out of such use and to provide evidence of insurance at least equivalent to that required of AIRLINE hereunder and naming AIRLINE as an additional insured.
- (4)** Before CITY is authorized under this agreement unilaterally to require AIRLINE to accommodate a Requesting Airline, CITY shall first request all parties holding or requesting access to affected space discuss accommodation among themselves. Only if the parties are unable to or do not reach agreement within thirty (30) days from the time CITY requests such discussions is CITY authorized to make such a decision unilaterally regarding accommodations.
- (5)** If the Requesting Airline fails to reach agreement with Airlines, CITY shall make a determination as to whether any Airline or Airlines have underutilized facilities or capacity available to accommodate the Requesting Airline after Taking into consideration the nature and extent of Airlines' operations at the Airport, including any requirements for spare space and whether there are any limitations on the nature, extent, cost, duration and extension of such accommodations.
- (6)** In making accommodation decisions CITY shall not be arbitrary and capricious. Such determinations by CITY shall take into consideration (a) the then existing utilization of the premises and any bona fide plan of AIRLINE for the increased utilization of the premises to be implemented within (12) month thereafter; and (b) the need for compatibility among the current schedules, flight times, operations, operating procedures and equipment of AIRLINE (and its Affiliated Airlines) and those of the Requesting Airline, as well as the need for labor harmony. Any non- public information provided by AIRLINE regarding planned or proposed routes, schedules or operations shall be treated as confidential by CITY to the maximum extent permitted by law.
- (7)** Before CITY accommodates a Requesting Airline within AIRLINE's Premises, CITY must give AIRLINE due notice of its intent. Within ten (10) days, AIRLINE must accept accommodation of Requesting Airline or must notify CITY that it wishes to meet with

CITY to show cause why the accommodation should not be made.

- (8)** If CITY elects to proceed with the accommodation after meeting with AIRLINE, CITY shall give AIRLINE not less than thirty (30) days to accomplish the accommodation.
- (9)** Whether AIRLINE agrees to accept the accommodation of Requesting Airline, or CITY elects to proceed with accommodation over AIRLINE's protests, the Requesting Airline has the right and the responsibility at its expense to make improvements and alterations necessitated by the accommodation of the Requesting Airline, the scope of which shall be approved by AIRLINE and CITY. If CITY issues a decision requiring accommodation within AIRLINE's Premises, that decision shall be a final decision of CITY; AIRLINE's continued objection's may be further pursued by any means available under the law.
- (10)** The foregoing shall not be deemed to abrogate, change, or affect any restrictions, limitations or prohibitions on assignments, subletting or use of the premises by others under this Agreement and shall not in any manner affect, waive or change any of the provisions thereof

Section 4.4 Remodeling and New Construction

CITY reserves the right to provide Exclusive Use Space to the Requesting Airline which has in addition become a Signatory Airline, by remodeling existing space or constructing new space, subject to the provisions of Article 5 hereof and after consultation with all Signatory Airlines.

- (A)** Remodeling will be treated as a tenant improvement and the sole cost will be borne by the Requesting Airline and the base rent per square foot per annum will be assessed at the same rate as that paid for similar space under lease by other Signatory Airlines at the Airport.
- (B)** New construction will be treated as a common cost element of the Terminal Building, and all costs involving additions or building modifications (including financing cost, if appropriate) will be included in the Terminal Building Requirement used to calculate Terminal Building Rental Rates, subject to the provisions of Article 5 hereof

Section 4.5 Access

- (A)** Subject to the provisions hereof the Rules and Regulations, and such restrictions as AIRLINE may impose with respect to its Exclusive Use Space, CITY hereby grants to AIRLINE, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of access, ingress, and egress to the leased premises and to Public Areas and public facilities of the Airport, together with all improvements, facilities and equipment now or hereafter located thereon. The Public Areas shall be in the possession and control of CITY and shall at all times remain public property to be used only as

public Airport facilities, except as may be otherwise provided herein.

(B) The ingress and egress provided for in Section 4.5 A above shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of AIRLINE that is not incidental to AIRLINE's Air Transportation business and that AIRLINE is not authorized to engage in or perform under the provisions hereof unless expressly authorized by the Manager.

(C) CITY shall have the right at any time to close, relocate, reconstruct, change, alter, or modify any such means of access, ingress, and egress provided for AIRLINE's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to AIRLINE and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof CITY shall use its best efforts to limit such closing to the duration appropriate to the circumstances. CITY shall consult with AIRLINE prior to any such closing which would adversely affect AIRLINE's operations unless such closing is necessitated by circumstances which pose an immediate threat to the health or safety of persons using the Airport. CITY shall suffer no liability by reason thereof and such action shall in no way alter or affect any of AIRLINE's obligations under this Agreement.

Section 4.6 Terminal Remodel & Reconstruction Project

CITY intends to remodel and reconstruct existing terminal space during the 2014-2016 lease term, subject to the provisions of Article 5 hereof.

This remodel and construction will be treated as a common cost element of the Terminal Building, and all costs involving additions or building modifications (including financing cost, if appropriate) not paid for with FAA Grants, State Grants, PFCs, and CFCs will be paid for using the Terminal Project Improvement Reserve Fund. The Terminal Project Reserve Fund will be funded using year-end cash balances received from terminal building rents actually received, in excess of the beginning year Terminal Building Requirement used to calculate Terminal Building Rental Rates, subject to the provisions of Article 5 hereof.

Upon completion of the Terminal Remodel and & Reconstruction Project, a reconciliation of the funding sources used will be provided to the Signatory Airlines.

ARTICLE 5

AIR CARRIER AIRPORT REQUIREMENT LIMITATION

Section 5.1 Limitation on Airline Rates & Charges Amounts

A. Rates and Fees identified in Article 6 and Article 7 are subject to the Air Carrier Airport Requirement Limitations agreed to by both parties as follows:

- (A)** During Calendar Year 2014, the total Rates & Charges paid by all Airlines operating at the terminal Building for both Terminal Rent and Landing Fee Charges shall not exceed \$1,400,000.
- (B)** During Calendar Year 2015, the total Rates & Charges paid by all Airlines operating at the Terminal Building for both Terminal Rent and Landing Fee Charges shall not exceed \$1,450,000.
- (C)** During Calendar Year 2016, the total Rates & Charges paid by all Airlines operating at the Terminal Building for both Terminal Rent and Landing Fee Charges shall not exceed \$1,500,000.
- (D)** During, the onetime Option Year- Calendar Year 2017, the total Rates & Charges paid by all Airlines operating at the Terminal Building for both Terminal Rent and Landing Fee Charges shall not exceed \$1,550,000.

ARTICLE 6

RENTALS AND FEES

Section 6.1 Consideration

In consideration of the rights and privileges granted under this Agreement, AIRLINE agrees to pay CITY, without deduction or setoff, during the term of this agreement, certain rentals and fees as set forth herein commencing on the Effective Date for Rentals and Fees.

Section 6.2 Landing Fee Charges

- (A)** AIRLINE shall pay CITY by the twentieth (20th) day of the month following the end of each calendar month, landing fee charges for landings for the preceding month at the, rate and in the amount then currently approved per this agreement.
- (B)** AIRLINE shall provide to airport a copy of its monthly landed weight report, including the number of landings by aircraft types, maximum gross certificated landed weight, and total landed weight by the tenth (10th) day of each month.

Section 6.3 Rentals for Exclusive Use Premises and Joint Use Premises:

- (A)** AIRLINE shall pay to CITY in advance, on the first day of each month, rentals for AIRLINE'S exclusively leased premises at the rates and in the amounts calculated in accordance with Exhibit "C" and then currently approved in the Airport Fee Schedule:
- (B)** AIRLINE'S proportionate share of rentals for each category and area of joint use premises shall be paid by AIRLINE to CITY no later than twenty (20) days following receipt by AIRLINE of billing therefor and shall be calculated in accordance with the

Joint Use Formula.

Section 6.4 Other Charges

Other charges payable by AIRLINE, shall be paid by AIRLINE to CITY within thirty (30) days following receipt by AIRLINE of billing therefor.

Section 6.5 Partial Month Charges

In the event the beginning or termination date with respect to any of the particular premises, facilities, rights, licenses, services, or privileges as herein provided falls on any day other than the first day of a calendar month, the applicable rentals, fees, and charges for that month shall be paid for said month on a prorated basis according to the number of days during which said particular premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

Section 6.6 Late Payments

In the event AIRLINE fails to make payment within fifteen (15) days of the dates due as set forth in this Article VI, then AIRLINE shall pay and CITY may charge, upon reasonable written notice to AIRLINE, a monthly service charge of 1.5%. Such charge shall be payable retroactive from the initial invoice date. If AIRLINE fails to make payment within ten (10) days after written notice from CITY to AIRLINE that such payments are late, AIRLINE shall also pay reasonable administrative costs and attorneys' fees incurred by CITY in attempting to obtain payment.

Section 6.7 Passenger Facility Charges

The CITY reserves the right to assess and collect Passenger Facility Charges subject to terms and conditions and such methods of collection set forth in the Aviation Safety and Capacity Expansion Act of 1990, section 9110 (the "PFC Act"). No Passenger Facility Charges shall be used for that portion of projects for which Airport Improvement Program grants are received by CITY, no depreciation or amortization charges for facility costs funded from the proceeds of a Passenger Facility Charge shall be included in the determination of rates for AIRLINE rentals and fees.

Section 6.8 Miscellaneous

The CITY may assess reasonable and non-discriminatory charges for miscellaneous facilities, activities, items or services provided to, or performed for, AIRLINE by the CITY, but only if such charges, facilities , activities, items or services are not specified in this Agreement and are voluntarily accepted in writing by AIRLINE.

Section 6.9 Information to be Supplied by AIRLINE

- (A)** In the event AIRLINE fails to submit the reports required by Section 6.2.B for the then current month by the tenth (10th) day of the succeeding month, CITY shall base its current rentals, fees, and charges upon the most recent data transmitted by AIRLINE to CITY, with such charges to be adjusted as necessary on the next succeeding payment date. If statistical data to be submitted by AIRLINE continues to be unavailable in the next succeeding month, CITY shall develop estimates as to AIRLINE'S monthly activity for use in the calculation of AIRLINE'S rentals, fees, and charges.
- (B)** The acceptance by CITY of any AIRLINE payment shall not preclude CITY from verifying the accuracy of AIRLINE'S reports on which AIRLINE'S rentals, fees, and charges are based and shall not be construed as a waiver of late payment penalty due on full or partial underpayment, if any.

ARTICLE 7

ADJUSTMENT OF RATES FOR RENTALS, FEES, AND CHARGES

Section 7.1 Effective Date of Adjustments

The Terminal Building Rental Rate and Landing Fee Rate shall be adjusted annually during the term of this Agreement as hereinafter set forth. Such adjustments shall be effective on the first day of the Calendar year for which they apply.

Section 7.2 CITY Records

- (A)** CITY has a cost accounting system and shall maintain appropriate accounting records that document Airport Revenue and Operations and Maintenance Expenses for each Airport Cost Center.
- (B)** CITY shall further maintain records evidencing the allocation of Capital Improvement expenditures and capital funding sources (federal grants, PFC revenues, debt and other CITY funds) to each Airport Cost Center. All federal grant monies received by CITY with respect to any project or improvement of the Airport and all PFC revenues shall be deposited in the appropriate fund or funds.

Section 7.3 Rates and Charges Forecast

- (A)** On or before July 1 of each Calendar year, AIRLINE agrees to submit to Manager a written estimate of total landed weight for AIRLINE for the succeeding Calendar year.
- (B)** On or before September 1 of each Calendar year, CITY shall submit to AIRLINE its proposed Rates and Charges Forecast for the succeeding Calendar year, including the:

- (1)**The Annual Budget of Airport Operation and Maintenance Expenses.
 - (2)**Estimated revenue from all sources other than Signatory Airline Terminal Building Rentals and Landing Fees.
 - (3)**The square footage of airline Exclusive Use Space and Joint Use Space.
 - (4)**A preliminary calculation of the Terminal Building Rental Rate, and Landing Fee Rate, in accordance with this Sections 7.4, 7.5 and 7.6, respectively, as illustrated in Exhibit C. The preliminary calculation amounts are subject to the Air Carrier Airport Requirement Amount Limitation described in Section 5.1.
- (C)** Manager shall then call a meeting of the Signatory Airlines to discuss the proposed Rates and Charges Forecast and the report on proposed Capital Improvements required under Article 5 hereof. CITY shall give appropriate consideration to the comments of the Signatory Airlines in finalizing the Rates and Charges Forecast. The calculation of airline rates, fees and charges in the final Rates and Charges Forecast shall be consistent with the provisions of this Agreement.
- (D)** CITY shall then adopt the final Rates and Charges Forecast following consultation with the Signatory Airlines. The Manager shall promptly furnish AIRLINE with a copy of the final Rates and Charges Forecast which shall set forth the average Terminal Building Rental Rate, and Landing Fee Rate that shall be effective for the applicable Calendar year.
- (E)** If, for any reason, the Rates and Charges Forecast has not been adopted as of the first day of any Calendar year, the rentals and fees in effect during the preceding Calendar year shall continue in effect until the new Rates and Charges Forecast has been adopted by CITY and CITY has calculated the rentals and fees in accordance therewith. The new Airline rentals and fees shall then be made effective the first day of such Calendar year.

Section 7.4 Calculation of Terminal Building Rental Rate

The Terminal Building Rental Rate shall be adjusted annually in the following manner

- (A)** The Terminal Building Area Requirement for the succeeding Calendar year shall be calculated by totaling the following amounts:
- (1)**the budgeted Operations and Maintenance Expenses allocated to the Terminal Building Area less any interest expense or depreciation for the original construction of the new terminal building constructed between 1988 and 1990 ;
 - (2)**the estimated amount of any reasonable assessment, judgment, or charge (net of insurance proceeds) to become payable by CITY relating directly to the Airport or its operation and allocable to the Terminal Building Area.

(B) The average Terminal Building Area Rental Rate (per square foot per year) shall then be calculated by dividing the Terminal Building Area Requirement by the total amount of leased space in the Terminal Building Area.

Section 7.5 Calculation of Landing Fee Rate

The Landing Fee Rate shall be adjusted annually in the following manner

(A) The Airfield Requirement for the succeeding Calendar year shall be calculated by totaling the following amounts:

- (1)** The total budgeted Operations and Maintenance Expenses, and financing costs of the Airfield
- (2)** The estimated amount of any reasonable assessment, judgment, or charge (net of insurance proceeds) to become payable by CITY relating directly to the Airfield or its operation.

(B) The Airfield Requirement shall then be reduced by all Airfield revenue other than Signatory Airline Landing Fees to determine the Airfield Landing Fee Requirement. Annually, the CITY agrees to determine the Landing Fee Rate using a "Modified Airfield Landing Fee Requirement" by reducing the rate by subsidy percentages indicated in Exhibit D –Fee Schedule for Airline Rates & Charges.

(C) The Landing Fee Rate for the succeeding calendar year shall then be calculated by dividing the Modified Airfield Landing Fee Requirement by the Total Landed Weight for the succeeding Calendar year as projected by the Manager based in part on the estimates provided by the Signatory Airlines pursuant to Section 7.3A.

Section 7.6 Year-End Adjustment of Rates and Charges

(A) Within ninety 90 days after the close of the calendar year CITY shall furnish the Signatory Airlines an updated copy of exhibits A, B & C in accordance with the provision of this Article 7 subject to the Limitations identified in Article 5. The actual Terminal Building Requirement and Airport Landing Fee Requirement shall be calculated by CITY based on actual Airport Revenues, Operations and Maintenance Expenses, financing costs and Total Landed Weight of the Signatory Airlines for the Calendar year and other factors. CITY shall then calculate the amounts of Terminal Building Rentals and Landing Fees that should have been billed to each of the Signatory Airlines during that Calendar year based on such actual data, following the procedures of Sections 7.4, 7.5 and 7.6. Amounts billed and paid in excess of actual terminal building rent requirements shall be deposited into the Terminal Project Improvement Reserve Fund; amounts actually required in excess of amounts billed shall be invoiced to each of the Signatory Airlines in the next ensuing month of the then-current Calendar year. Within sixty (60) days of

issuance of the audit CITY shall make available a copy of the report

- (B)** Adjustments to rentals, fees, and charges pursuant to this Article 7 shall apply without the necessity of formal amendment of this Agreement. However, CITY will notify the AIRLINES in writing of all adjustments to rentals, fees and charges. In accordance with Section 7.2 herein, a statement showing the calculation of the new rates for rentals, fees, and charges as shown on Exhibit "C" shall be prepared by CITY and transmitted to AIRLINE. Said statement shall then be deemed part of this Agreement, provided such rates and charges are consistent with the terms of this agreement.

Section 7.7 CITY Covenants

- (A)** CITY covenants that for purposes of keeping its books of account and allocating revenues and expenses, it will observe sound business principles for effective and prudent control of operation, maintenance, and administration expenses.
- (B)** CITY shall operate Airport in a manner so as to produce revenues from concessionaires, tenants, and other users of Airport in amounts which would be produced by a reasonably prudent operator of an airport of substantially similar size, use, and activity, with due regard for the interests of the public.
- (C)** CITY shall not include the cost of any service provided by any governmental agency other than CITY as an expense in the calculation of rentals, fees, and charges payable by AIRLINE unless a direct charge is paid by CITY to the governmental agency providing such service.
- (D)** CITY shall apply all rentals, fees, and charges, concession revenues, and any other amounts collected solely to defray the costs of operating, maintaining, changing, and expanding the Airport, except as may otherwise be required by law.
- (E)** CITY shall not enter into any lease, contract, or any other agreement with any other Signatory Airline containing substantially more favorable terms than this Agreement, or to grant any tenant engaged in Air Transportation, rights or privileges with respect to the Airport that are not accorded AIRLINE hereunder, unless the same rights, terms and privileges are concurrently made available to AIRLINE.

ARTICLE 8

MAINTENANCE, REPAIR, ALTERATIONS, AND IMPROVEMENTS

Section 8.1 AIRLINE's Responsibilities

AIRLINE shall have the following maintenance and repair obligations:

- (A)** AIRLINE agrees that, upon AIRLINE's occupancy of its Exclusive Use Space, such space is

in good, tenantable condition unless otherwise noted in writing to the Manager.

(B) AIRLINE, except as hereinafter provided, shall not call on CITY for any of the following janitorial services or nonstructural repairs to its Exclusive Use Space and AIRLINE shall, at its sole expense and in a manner acceptable to CITY:

(1) Maintain its Exclusive Use Space in reasonably good, tenantable condition.

(2) Maintain the aircraft ramp area in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers; and remove from its aircraft parking positions, all oil, fuel, and grease spillage attributable to AIRLINE's aircraft and equipment. This includes such clearing and removal of snow that is reasonably necessary to permit operations.

(3) Perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and nonstructural repair of all facilities, fixtures, personal property, and equipment.

(4) Immediately repair any damage in any other space at the Airport occasioned by the fault or negligence of AIRLINE, its servants, agents, employees and licensees.

(C) Except as may be caused by the sole negligence of CITY or its employees, agents or contractors, AIRLINE expressly agrees that CITY shall not be liable to AIRLINE, its employees, passengers, or business visitors for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority.

(D) If AIRLINE fails to perform its obligations under this Article 8 after notice and reasonable opportunity to cure such failure, CITY may do so and recover its entire cost plus a fifteen percent (15%) administrative charge from AIRLINE as Additional Rent on the next rental due date.

Section 8.2 CITY's Responsibilities

(A) CITY, during the term of this Agreement, shall retain FAA Airport Certification and keep in good repair, or arrange for the operation, maintenance, and reasonably good repair of, all areas and facilities of the Airport except as specifically otherwise assigned by this Agreement, including, but not limited to, the Public Areas and the Joint Use Space of the Terminal Building, vehicular parking areas, runways, landing lights, floodlights, beacons and other field lighting, taxiways, aprons, roadways, and all appurtenances, facilities, and services now or hereafter connected with the foregoing. CITY also shall keep the Airport reasonably free from obstructions, including, without limitation, vegetation, stones, and other foreign matter, as reasonably necessary, from the landing area, ramp area, taxi area, roadways, vehicular parking areas, and aircraft parking areas for the safe,

convenient, and proper use of the Airport by AIRLINE.

- (B)** CITY shall operate and maintain the Airport in a reasonably prudent manner and in accordance with the rules, regulations and orders of any Federal or State agency having jurisdiction with respect thereto.
- (C)** CITY shall maintain the exterior portions of the walls and roof of the Exclusive Use Space and all central mechanical distribution systems in good repair and condition. Additionally, CITY shall maintain the main plumbing systems in good repair and condition.
- (D)** The undertakings by CITY under this Section 8.2 do not relieve AIRLINE of its duties to maintain any leased facilities as specified in Section 8.1 and to use Joint Use facilities with due care.
- (E)** CITY shall use its best efforts to keep the Airport open and in operation for landings and takeoffs of aircraft of any type designed to use facilities similar to those at the Airport. In such regard, CITY shall employ or cause to be employed construction, reconstruction and repair techniques which will minimize Airport operational delays or disruptions reasonably expected to result from such construction, reconstruction or repair, including but not limited to coordination with affected AIRLINE's representatives or its designee.
- (F)** CITY reserves the right to remodel existing space or construct new space. This construction will be treated as a common cost element of the Terminal Building, and all costs involving additions or building modifications (including financing cost, if appropriate) will be included in the Terminal Building Requirement used to calculate Terminal Building Rental Rates, subject to the provisions of Article 5 hereof.

Section 8.3 CITY's Right to Inspect and Make Repairs

CITY, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right (at such time and upon reasonable notice to AIRLINE as may be reasonable under the circumstances and with as little interruption of AIRLINE's operations as is reasonably practicable) to enter AIRLINE's Exclusive Use Space and Joint Use Space for the following purposes:

- (A)** to inspect such space to determine whether AIRLINE has complied and is complying with the terms and conditions of this Agreement;
- (B)** to accomplish repairs or replacements by CITY pursuant to Section 8.2, or in any case where AIRLINE is obligated to make repairs or replacements and has failed to do so, after notice as provided herein, make such repairs or replacements on AIRLINE's behalf, and

(C) in the exercise of CITY's police powers.

No such entry by or on behalf of CITY upon any Exclusive Use Space leased to AIRLINE shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with the possession thereof by AIRLINE.

Section 8.4 Alterations and Improvements

AIRLINE shall make no alterations, additions, improvements to, or installations on the space leased under this Agreement without the prior written approval of the Manager.

ARTICLE 9

DAMAGE or DESTRUCTION TO PREMISES

Section 9.1 Minor Damage

If any part of AIRLINE Premises, or adjacent facilities directly and substantially affecting the use of AIRLINE Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render AIRLINE Premises untenable as reasonably determined by the CITY, the same shall be repaired to usable condition with due diligence by the CITY as provided in Section 9.4.

Section 9.2 Substantial Damage.

If any part of AIRLINE Premises, or adjacent facilities directly and substantially affecting the use of AIRLINE Premises, shall be so extensively damaged by fire, or other casualty, as to render any portion of said AIRLINE Premises untenable but capable of being repaired, as reasonably determined by the CITY, the same shall be repaired to usable condition with due diligence by the CITY as provided in Section 9.4. In such case, the rentals payable hereunder with respect to affected AIRLINE Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the part of the area rendered untenable bears to total AIRLINE Premises of the same category and area. Such abatement in rent will continue until such time as such affected AIRLINE Premises shall be restored adequately for AIRLINE's use. The CITY shall use its best efforts to provide alternate facilities to continue AIRLINE's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space.

Section 9.3 Total Damage.

(A) If any part of AIRLINE Premises, or adjacent facilities directly and substantially affecting the use of AIRLINE Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said AIRLINE Premises incapable of being repaired, as reasonably determined by the CITY, the CITY shall notify AIRLINE

within a period of ninety (90) days after the date of such damage of its decision whether to reconstruct or replace said space. However, the CITY shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected AIRLINE Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by AIRLINE.

- (B)** In the event the CITY elects to reconstruct or replace affected AIRLINE Premises, the CITY shall use its best efforts to provide alternate facilities to continue AIRLINE's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the CITY is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, AIRLINE shall have the right, upon giving the CITY thirty (30) days advance written notice, to delete the affected AIRLINE Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said AIRLINE Premises, unless such damaged or destroyed premises prevent AIRLINE from operating at Airport.
- (C)** In the event the CITY elects not to reconstruct or replace affected AIRLINE Premises, the CITY shall meet and consult with AIRLINE on ways to permanently provide AIRLINE with adequate replacement space for affected AIRLINE Premises. AIRLINE shall have the right, upon giving the CITY thirty (30) days advance written notice, to delete the affected AIRLINE Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said AIRLINE Premises, unless the loss of such premises prevents AIRLINE from operating at Airport.

Section 9.4 Scope of Restoration of Premises.

- (A)** The CITY's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article 9 shall in any event be limited to using due diligence and best efforts to restore affected AIRLINE Premises to substantially the same condition that existed prior to any such damage and shall further be limited to the extent of insurance proceeds available to the CITY for such repair, reconstruction, or replacement. AIRLINE agrees that if the CITY elects to repair, reconstruct, or replace affected premises as provided in this Article 9, then AIRLINE shall proceed with reasonable diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment and other items provided or installed by AIRLINE in or about AIRLINE Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
- (B)** In lieu of the CITY's repair, reconstruction or replacement of the affected premises, as provided in Section 9.4 A., if AIRLINE requests to perform said function with respect to damage under Section 9.1 and 9.2, the CITY may in its sole discretion, allow the AIRLINE to perform such work. AIRLINE shall not be performing such work as an agent or

contractor of the CITY. The CITY shall reimburse AIRLINE for the cost of such work performed by AIRLINE that was otherwise the obligation of the CITY if prior to performing such work, the CITY and AIRLINE agree that such work is the obligation of the CITY to perform.

Section 9.5 Damage From AIRLINE Negligence.

Notwithstanding the provisions of this Article 9, in the event that due to the negligence or willful act of AIRLINE, its agents, servants or employees, or those under its control, AIRLINE Premises shall be damaged or destroyed by fire, casualty or otherwise, there shall be no abatement of rent during the restoration or replacement of said AIRLINE Premises and AIRLINE shall have no option to delete the affected AIRLINE Premises from this Agreement under the provisions of this Article 9. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to the CITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to the CITY.

ARTICLE 10

INSURANCE, INDEMNIFICATION AND SECURITY

Section 10.1 Indemnification.

CITY shall stand indemnified by AIRLINE as herein provided. AIRLINE is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and CITY shall in no way be responsible therefore. AIRLINE covenants and agrees to indemnify, hold harmless and defend, at its expense, CITY, its officers, agents, servants or employees from and against any and all claims or suits for damages or injury, including death, to any and all persons or property, of whatsoever kind or character, arising out of or incident to the leasing, use, occupancy or maintenance of the premises by AIRLINE, its officers, agents, employees, patrons, contractors, subcontractors, licensees or invitees; and AIRLINE does hereby assume all liability and responsibility of CITY, its officers, agents, servants and employees for any and all claims or suits for damages or injuries, including death, to any and all persons or property, of whatever real or asserted, occurring during the term of this Agreement in connection with the use, occupancy or maintenance of the premises by AIRLINE, its officers, agents, employees, patrons, contractors, subcontractors, licensees, or invitees, provided, however, that AIRLINE shall not be liable for any injuries or damage or loss occasioned by the negligence of CITY, its officers, employees, agents, or contractors; and AIRLINE hereby indemnifies and holds harmless CITY for any and all damage or destruction to CITY's property arising out of the acts or omissions of AIRLINE, its officers, agents, employees contractors, subcontractors, licensees, invitees or patrons. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement.

Section 10.2 AIRLINE Insurance.

(A) AIRLINE at its sole cost and expense and for the full term of this Agreement or any

renewal thereof, shall obtain and maintain all of the following minimum insurance: Coverage shall provide limits per occurrence to a combined single limit in amounts not less than those set forth below:

(1) Insurance:

(i) Airline Liability Insurance: For the protection of AIRLINE and the CITY, its managers, officers, agents, and employees, insuring against damages because of bodily injury, death, property damage, and arising out of any operations of AIRLINE in connection with this Agreement.

(2) Insurance Limits of liability for AIRLINE shall be determined by the capacity in passenger seats of the largest aircraft in AIRLINE's fleet as follows:

(i) Not less than one hundred fifty million dollars (\$150,000,000) per occurrence for airlines operating aircraft of one hundred (100) seats or more;

(ii) Not less than one hundred million dollars (\$100,000,000) per occurrence for airlines operating aircraft of between sixty (60) and ninety-nine(99) seats;

(iii) Not less than fifty million dollars (\$50,000,000) per occurrence for airlines operating aircraft of between twenty (20) and fifty-nine(59) seats;

(3) Hanger Keepers Liability Insurance

(i) Hanger keepers liability insurance in an amount adequate to cover any non-owned property in the care, custody, and control of AIRLINE on the Airport, but in any event in an amount not less than five million dollars (\$5,000,000).

(4) Automobile liability Insurance

(i) Automobile liability insurance in an amount adequate to cover automobile insurance while on Airport premises in an amount not less than five million dollars (\$5,000,000) per person per occurrence.

(5) A Commercial General Liability policy with a minimum limit of not less than Five Million Dollars (\$5,000,000.00) which shall include but not necessarily be limited to at least Commercial General Liability in respects of all Ground Operations of the named insured, including but not limited to Premises Operations, Contractual, Independent Contractors, Personal Injury, Airport Operations, products and completed operations.

(6) AIRLINE shall maintain in force worker's compensation insurance including coverage for "Employers' Liability".

- (7)** No later than thirty (30) days following the execution of the Agreement, AIRLINE shall file with CITY, a Certificate of Insurance signed by the insurer's representative evidencing the coverage required by this Agreement. The Certificate of Insurance, shall name the CITY as additional insured on any Airline Liability, Hangar Keepers Liability, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following; The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insured's. Such evidence shall include an additional insured Endorsement signed by the insurer's representative. AIRLINE shall provide CITY with a thirty (30) day notice prior to termination, cancellation or any material change in the policy. CITY reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.
- (8)** Breach of Warranty. The Airlines insurer agrees that this insurance, as to the interest of the CITY only, shall not be invalidated by any act or neglect or breach, whether or not such act or neglect is a breach or violation of any warranties, declarations or conditions of the Airlines policy.
- (9)** Airline Insurance Primary. Airlines insurance coverage shall be primary insurance as respects to City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City its officials, employees, agents and contractors, shall be excess of Airline's insurance and shall not contribute with it.
- (10)** Waiver of Subrogation for Physical Damage. The Airline and Airline's insurer gives up the right to take action against the City of La Crosse, its officials, employees, agents or contractors, for any damage to Airline property during a loss contributed to by the negligence, omission or condition of premises or equipment used at the City of La Crosse Airport.

Section 10.3 Security for Payment

- (A)** To provide security for the rentals, fees and charges due hereunder, AIRLINE shall provide the security specified in Sections 10.4 and 10.5, unless the CITY determines that AIRLINE qualifies for relief from such requirement as set forth in this Section:
- (1)** No security for payment shall be required if, AIRLINE has (i) provided regularly scheduled passenger flights to and from the Airport for the eighteen (18) months prior to the Effective Date of this Agreement (or the date of any assignment permitted pursuant to Section 13.1), and (ii) has not been delinquent with respect to the payment of any and all rentals, fees and charges payable by AIRLINE to the CITY during said period.
- (2)** No security for payment shall be required if , after procuring the security required by Section 10.5 for the eighteen (18) consecutive months during which AIRLINE has provided regular passenger service to and from the Airport, AIRLINE commits no event of default under Section 12.1.

(B) If AIRLINE shall commit an event of default under Section 12.1, the CITY shall have the right, by written notice to AIRLINE, to impose or reimpose the security requirements of Section 10.3 A. In such event, AIRLINE shall provide the CITY with the required security and shall thereafter maintain such security in effect until it complies with the provisions of Section 10.3A(2). The CITY shall have the right to reimpose the requirements of Section 10.3A each time AIRLINE commits such an event of default during the term of this Agreement. The CITY's rights under this Section 10.3 B shall be in addition to all other rights and remedies provided to the CITY under this Agreement or by law.

Section 10.4 Types of Security

(A) When required by section 10.3 to provide security for the rentals, fees and charges due hereunder, AIRLINE shall comply with any one of the following three options within thirty (30) days following the Effective Date of this Agreement, or by the CITY's notice pursuant to Section 10.3B:

(1) Post with the CITY a surety bond, to be maintained for the twelve (12) month period referred to in Section 10.3 A. Such bond shall be issued by a surety company acceptable to the CITY and authorized to do business in the State of Wisconsin, and shall be in a form and content satisfactory to the CITY.

(2) Deliver to the CITY an irrevocable letter of credit drawn in favor of the CITY upon a bank which is satisfactory to the CITY, and which is authorized to do business in the State of Wisconsin. Said letter of credit shall be kept in force for the eighteen (18) month period referred to in Section 10.3 A. and shall be in a form and content satisfactory to the CITY.

(3) Provide such other security as the CITY may elect to accept as an alternative to that specified in Sections 10.4 A.(1) and (2).

(B) For purposes of this Section 10.4, any surety bond or letter of credit shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the term of this Agreement.

Section 10.5 Amount of Security.

The amount of security required by Section 10.4 shall be an amount equal to three (3) months' average rentals on AIRLINE rented space, landing fees and Passenger Facility Charges, all as reasonably estimated by the CITY.

ARTICLE 11

RULES AND REGULATIONS, COMPLIANCE WITH LAWS AND AFFIRMATIVE ACTION, NONDISCRIMINATION

Section 11.1 Rules and Regulations

- (A)** AIRLINE shall observe and obey all ordinances and Rules and Regulations governing conduct on and operations at the Airport and use of its facilities. CITY agrees that all Rules and Regulations so promulgated shall not be inconsistent with the express terms of this Agreement or any legally authorized rule or regulation of the FAA, or any other Federal or State agency, which is binding in law on AIRLINE, as the same now are or may from time-to-time be amended or supplemented. Except as so expressly limited, CITY's authority to promulgate or amend Rules and Regulations shall not be affected by this Agreement.
- (B)** AIRLINE shall not violate, nor permit its agents, contractors, or employees acting on AIRLINE's behalf to violate any such Rules and Regulations that are now in effect or as may from time-to-time during the term hereof be promulgated by CITY. Copies of the Rules and Regulations, as adopted, shall be forwarded to AIRLINE's local manager.
- (C)** CITY, acting in its governmental capacity and not as Airport operator, shall prescribe civil penalties and injunctive remedies for violations of such Rules and Regulations, and the same may be applied to AIRLINE for violations by its agents, employees, and contractors acting on AIRLINE's behalf. Nothing contained in this Section 11.1 shall prevent AIRLINE from contesting in good faith any Rules and Regulations.

Section 11.2 Compliance with Law

- (A)** AIRLINE shall not use its Exclusive Use Space, Joint Use Space, or any part thereof or permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances, laws, and Rules and Regulations of CITY and of any city, county, or state government or agency or of the U.S. Government, and of any political division or subdivision of agency, city, or commission thereof that may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or to the Exclusive Use Space, and Joint Use Space.
- (B)** At all times during the term of this Agreement, AIRLINE shall, in connection with AIRLINE's activities and operations at the Airport:
- (1)** Comply with and conform to all existing and future statutes, resolutions and ordinances, and the rules and regulations promulgated thereunder, of all Federal, State, and other governmental bodies of competent jurisdiction that apply to or

affect, either directly or indirectly, AIRLINE or AIRLINE's operations and activities under this Agreement.

(2) Reimburse CITY for any and all fines levied against CITY resulting from AIRLINE's non-compliance with any federal, state or local laws, rules and regulations.

(3) Make, at AIRLINE's own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such laws, ordinances, and rules and regulations referred to in Section 11.2 B(1), to which this Agreement is expressly subject.

(4) Reimburse CITY for AIRLINE's prorata share in accordance with the Joint Use Formula of all nonstructural improvements, repairs, and alterations to AIRLINE's Joint Use Space that are required to comply with or conform to any of such laws, ordinances, and rules and regulations referred to in Section 11.2 B(1), to which this Agreement is expressly subject.

(5) Be and remain an independent contractor with respect to all installations, construction, and services performed by or at the request of AIRLINE, hereunder.

Section 11.3 Nondiscrimination

AIRLINE, as part of the consideration hereof and as a covenant running with the Agreement, hereby covenants and agrees that:

(A) In the event facilities are constructed, maintained, or otherwise operated for a purpose for which a Federal Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed 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, and as such regulations may be amended.

(B) No person on the grounds of race, creed, color, national origin, sex, age, or physical handicap shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities.

(C) No person on the grounds of race, creed, color, national origin, sex, age, or physical handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under the lease premises and the furnishing of services thereon.

(D) AIRLINE shall use the premises 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, and as such regulations may be amended.

- (E)** AIRLINE agrees that it shall insert the provisions of Section 11.3 A, B, C, and D, inclusive, in any lease or other agreement by which it grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.
- (F)** In the event of breach of any of the nondiscrimination covenants set forth in this Section 11.3, CITY shall have the right to terminate this Agreement and to reenter and repossess the premises and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision shall not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the expiration of appeal rights.
- (G)** AIRLINE assures CITY that AIRLINE will, to the extent authorized by law, undertake an affirmative action program as required by FAA Regulations, Title 14, Code of Federal Regulations, Part 152, Subpart E, entitled "Nondiscrimination in Airport Aid Program," or otherwise approved by the FAA, to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or physical handicap, be excluded from participation in any employment activities covered in such Subpart E. AIRLINE further assures CITY that no person shall be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. AIRLINE further assures CITY that it will require that its covered suborganizations provide assurances to AIRLINE that, to the extent authorized by law, they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.
- (H)** AIRLINE covenants and agrees that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in the performance of this Agreement on the grounds of race, color, national origin, or sex, as provided in Part 23, of Title 49, of the Code of Federal Regulations entitled "Participation by Minority Business Enterprise in Department of Transportation Programs."
- (I)** In the event of a breach by AIRLINE of any of the assurances or covenants in Section 11.3 G, and H, CITY shall have the right to terminate this Agreement, and to reenter and repossess any leased facilities hereunder, and to hold the same as if this Agreement had never been made or issued, but not without the express prior concurrence or direction of the U.S. Department of Transportation or the FAA following suitable review, if any, of such breach and affording AIRLINE a reasonable opportunity to rectify the same, if appropriate.

ARTICLE 12

DEFAULT AND TERMINATION

Section 12.1 Events of Default

If:

- (A)** AIRLINE fails to pay rent or make any other payment past due hereunder within fifteen (15) days after receipt of written notice of nonpayment; or
- (B)** AIRLINE fails to commence immediately to keep and perform any of its covenants and agreements in this Agreement within fifteen (15) days after receipt of written notice of failure to keep or perform such covenants and agreements; or
- (C)** AIRLINE fails to continue to complete any of its covenants and agreements after performance is commenced as described in B above; or
- (D)** any petition, proceedings or action by, for, or against AIRLINE is filed under any insolvency, bankruptcy, or reorganization act of law.

Then at the election of CITY, upon thirty (30) days advance written notice:

- (1)** Without terminating this Agreement, CITY may reenter the space and restore to rentable condition and relet all or any part of it to others, including costs of restoration and a fifteen percent (15%) administrative fee to be paid to CITY. AIRLINE shall promptly reimburse CITY for any deficiency in rentals or other payments received under such subletting, compared with AIRLINE's obligations hereunder.
- (2)** At any time before or after a reentry and relating as provided in Section 12.1(D)(1) above, CITY may terminate AIRLINE's rights under this Agreement, and CITY may reenter and take possession of all space, and cancel all rights and privileges granted to AIRLINE hereunder, without any restriction on recovery by CITY for past due rentals and other obligations of AIRLINE.

CITY shall have all additional rights and remedies as may be provided to landlords by law.

Section 12.2 Events Permitting Termination of Agreement by AIRLINE

- (A)** AIRLINE may terminate this Agreement and all of its future obligations hereunder at any time that AIRLINE is not in default in its payments or other obligations to CITY hereunder, by giving the Manager thirty (30) days advance written notice if
 - (1)** CITY is in default of any material provision of this Agreement; or

(2) AIRLINE becomes subject to any order, rule or regulation of any Federal or State agency or to a court order which prevents or substantially prevents AIRLINE's use of the Airport for more than ninety (90) days following written notice by AIRLINE to the Manager; or

(3) AIRLINE terminates its Air Transportation business at the Airport.

(B) AIRLINE termination shall not be effective unless and until at least thirty (30) days have elapsed after written notice to CITY specifying the date upon which such termination shall take effect and the reason for such termination. CITY may cure the cause of such termination within said thirty (30) day period, or such longer time as the parties may agree thereto.

Section 12.3 Events Permitting Termination of Agreement by CITY

(A) CITY, at its option, may declare this Agreement terminated on the occurrence of any one or more of the following events, and may exercise all rights of entry and reentry of AIRLINE's Exclusive Use Space:

(1) If any act occurs that deprives AIRLINE permanently of the rights, power, and privileges necessary for the proper conduct and operation of its Air Transportation business.

(2) In the event AIRLINE fails to provide scheduled Air Transportation for a period of thirty (30) days (except for events of Force Majeure), CITY may cancel this Agreement on thirty (30) days written notice. However, if AIRLINE cures the breach within this thirty (30) day period, the Agreement shall continue in full force and effect.

(3) If AIRLINE abandons and fails to use its Exclusive Use Space for a period of thirty (30) days at any one time, except when such abandonment and cessation are due to fire, earthquake, strike, governmental action, default of CITY, or other cause beyond AIRLINE's control

(4) If Airline fails to operate at least five (5) weekly scheduled passenger service departures from the Airport, for a period of thirty (30) days or more (except by reason of an event of Force Majeure).

(5) If new State or Federal rules, regulations, or laws require CITY to expend funds in an amount greater than ten percent (10%) of the annual revenue received from all airlines subject to this agreement.

(B) CITY termination shall not be effective unless and until at least thirty (30) days have elapsed after written notice to AIRLINE specifying the date upon which such termination

shall take effect and the reason for such termination. AIRLINE may cure the cause of such termination within said thirty (30) day period, or such longer time as the parties may agree thereto.

Section 12.4 Possession by CITY

In the event of a default under section 12.1 of this agreement, all rights of AIRLINE shall be forfeited, provided CITY shall have and reserve all of its available remedies at law as a result of said breach of this Agreement.

Failure of CITY to declare this Agreement terminated on default of AIRLINE for any of the reasons set forth in Section 12.1 herein shall not operate to bar, destroy, or waive the right of CITY to cancel this Agreement by reason of any subsequent violation of the terms hereof.

ARTICLE 13

ASSIGNMENT, SUBLETTING, MERGER and BANKRUPTCY

Section 13.1 Assignment and Subletting

AIRLINE shall not assign this Agreement, or any part hereof in any manner whatsoever or sublet the premises or any part thereof or any of the privileges recited herein without the prior written consent of the Manager. However, AIRLINE shall have the right to assign all or any part of its rights and interests under this Agreement to any affiliated Air Transportation company, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets, and the consent of CITY thereto shall not be required; provided, however, due notice of any such assignment shall be given to the Manager at least thirty (30) days prior to such assignment hereunder.

Section 13.2 Nonwaiver of Responsibility

No assignment, transfer, conveyance, sublease, or granting a nonexclusive license by AIRLINE shall relieve AIRLINE of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent of the Manager to such relief

Section 13.3 Relinquishment of Space

If AIRLINE desires to relinquish any of its Exclusive Use Space or any rights to Joint Use Space, AIRLINE may notify the Manager of the space available, and the Manager shall use a best effort to reassign the space to another airline. No reassignment by the Manager, nor any assignment, transfer, conveyance, or sublease by AIRLINE shall relieve AIRLINE of its primary responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent by the Manager to such relief

Section 13.4 Ground Handling Agreements

In the event AIRLINE desires to ground handle any portion of the operations of another airline, AIRLINE shall obtain prior written permission of the Manager.

Section 13.5 Bankruptcy

Notwithstanding Section 13.1, any party to this Agreement which seeks protection under the Bankruptcy Code, or is currently operating under the protection of the Bankruptcy Code, herein called "Debtor", shall be prohibited from conveying its interest under this Agreement to any other entity without written authorization of CITY. In the event that such a Debtor intends to assume the Agreement, or assume and assign the Agreement pursuant to 11 U.S.C. 365, the Debtor shall be required to immediately cure any and all defaults and provide adequate assurance of future performance under the Agreement which shall include, but not be limited to:

- (A)** Adequate assurance of the reliability of the proposed source for the rentals due under this Agreement on the assumption or assignment of this Agreement.
- (B)** Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement.
- (C)** The procurement of a bond from a financially reputable surety covering any costs or damages incurred by CITY in the event that CITY, within one (1) year following the assumption or assignment of this Agreement, becomes entitled to, and exercises, any right to reassign the leased space covered under Section 4.4 of this Agreement.

Section 13.6 Consent

Consent by the Manager to any type of transfer provided for by this Article 13 shall not in any way be construed to relieve AIRLINE from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

ARTICLE 14

ENVIRONMENTAL

SECTION 14.1 Standards of Operation

Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- (A)** Airline may store and use Hazardous Materials on the Airline Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental

Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Airline shall provide Airport Manager with a copy of any application for a permit for use or storage of Hazardous Materials on the Airline Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and

- (B)** Airline may use Hazardous Materials on the Airport other than the Airline Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

SECTION 14.2 Liability

Airline shall be solely and fully responsible and liable for:

- (A)** Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport, by Airline, Airline's officers, agents, employees, or contractors, or Affiliated Airlines, or
- (B)** Any Hazardous Material release which is caused by or results from the activities of Airline, Airline's officers, agents, employees, or contractors, or Affiliated Airlines on the Airline Premises or the Airport.

SECTION 14.3 Prevention of Release

Airline shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airline Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

SECTION 14.4 Obligation to Investigate and Remediate

Airline, at Airline's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- (A)** Any release or danger of release of Hazardous Material on the Airline Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or
- (B)** Any release or danger of release of Hazardous Material which commenced during the Term of this Agreement and which is discovered on the premises of the use area by airline , unless Airline establishes through investigation, sampling, testing and analysis acceptable to Airport Manager, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by

migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Airline does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and Airline shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Airline.

SECTION 14.5 Cessation of Activities

Airline shall cease its activities on the Airline Premises and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Airline shall not recommence its activities on the Airline Premises or the Airport, as appropriate, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to City.

SECTION 14.6 Records and Inspections

(A) Airline shall maintain, during the term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(B) Upon request by City, Airline shall furnish City with such daily records, and such other documentation or reports as the Airport Manager, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(C) City shall have the right, under the terms hereof, to enter the Airline Premises during the Term hereof to conduct periodic environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Airline's operations.

SECTION 14.7 Airline Obligations upon Termination

Prior to vacating the Airline Premises, and in addition to all other requirements under this Agreement, Airline shall remove any Hazardous Materials placed on the Airline Premises during the Term by Airline or as a result of Airline's use or occupancy of the Airline Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance

with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City. This removal and demonstration shall be a condition precedent to City's return or release of any portion of the Contract Security, if any, to Airline upon termination or expiration of this Agreement.

SECTION 14.8 Storm Water

- (A)** Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Airline agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and uses thereof.
- (B)** Airline acknowledges that any storm water discharge permit issued to City may name Airline as a co-permittee. City and Airline both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable storm water rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.
- (C)** City will provide Airline with written notice of any storm water discharge permit requirements applicable to Airline and with which Airline will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline agrees that within ten (10) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Airline does not provide such timely notice, Airline will be deemed to assent to undertake such storm water permit requirements. In that event, Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those storm water permit requirements for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or noncompliance with any such permit requirements.

ARTICLE 15

GENERAL PROVISIONS

SECTION 15.1 Successors and Assigns Bound

This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 15.2 Governing Law

Agreement and all disputes arising here under shall be governed by the laws of the State of Wisconsin.

SECTION 15.3 Severability

If any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of any such covenant, condition, or provision does not materially prejudice either party hereto in its respective rights and obligations contained in the valid covenants, conditions, or provisions in this Agreement.

SECTION 15.4 Quiet Enjoyment

AIRLINE shall, upon payment of the rentals and fees herein required, and subject to performance and compliance by AIRLINE of the covenants, conditions, and agreements on the part of AIRLINE to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted hereby and by the Rules and Regulations.

SECTION 15.5 Federal Income Tax Matters

- (A) Irrevocable Election to Waive Depreciation and Investment Tax Credit.** AIRLINE (and any successor in interest) covenants that it shall properly elect at the time this Agreement is executed to irrevocably waive depreciation and investment tax credit with respect to the leased property. AIRLINE agrees to retain a copy of such election in its records for the entire term of the Agreement. AIRLINE further covenants that any publicly recorded document which is recorded in lieu of the Agreement will also state that neither AIRLINE or any successor in interest under the Agreement will claim depreciation or any investment credit with respect to the leased property. The term "leased property" for purposes of the foregoing election shall not include any property (including fixtures, etc.) which was not funded with the proceeds of any "tax-exempt bond", as such term is defined by Section 150(a)(6) of the Internal Revenue Code of 1986 (the "Code").
- (B) Restrictions on Lease Term (Including Renewal Options).** Notwithstanding any other provision of this Agreement, in compliance with Section 142(b)(1)(B)(ii) of the Code under no circumstances will the term of this Agreement, including all options to renew, and successive agreements, exceed twenty years.
- (C) Restrictions on Office Space.** Notwithstanding any other provisions of this Agreement, in compliance with Section 142(b)(2)(B) of the Code, AIRLINE covenants that no portion of

the leased premises will be used for office space if more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations of such leased premises.

- (D) Restrictions on Size of Certain Retail Facilities.** Notwithstanding any other provisions of this Agreement, in compliance with Section 142(c)(2)(B) of the Code, AIRLINE covenants that under no circumstances will the leased property be used to provide any restaurant, food or beverage facility or retail facility which is of a size in excess of a size necessary to serve passengers, including persons meeting or accompanying persons arriving and departing on flights to and from the Airport, and employees at the Airport.
- (E) Prohibitions on Certain Uses of the Leased Property.** Notwithstanding any other provisions of this Agreement, in compliance with Section 147(e) of the Code, AIRLINE covenants that under no circumstances will the leased premises be used as part of a health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.
- (F) General Tax Covenants of the AIRLINE.** AIRLINE hereby covenants to take any action, or refrain from any action, as may be necessary to comply with any of the foregoing provisions of this Section 14.5.

SECTION 15.6 Liens

AIRLINE shall cause to be removed promptly any and all liens of any nature arising out of or because of any construction performed by AIRLINE or any of its contractors or subcontractors upon Exclusive or Joint Use Space or arising out of or because of the performance of any work or labor by or for it or them at said premises, reserving the right to contest in court the validity of any such liens. AIRLINE shall have the right to post an appropriate bond to cover its obligations pursuant to this paragraph.

In the event any person or corporation shall attempt to assert a mechanic's lien against the leased premises for improvements made by AIRLINE, AIRLINE shall hold CITY harmless from such claim, including the cost of defense.

SECTION 15.7 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between CITY and the United States, relative to the operation or maintenance of the Airport, or to the expenditure of Federal funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, the Federal Aid to Airport Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, as such acts have been amended or replaced from time-to-time. In the event that the FAA requires, as a condition precedent to the granting of funds for the improvement of the Airport, modifications or changes to this Agreement, AIRLINE agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the

terms, conditions, or requirements of this Agreement as may be required to enable CITY to obtain such grant of funds.

SECTION 15.8 Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

SECTION 15.9 Entire Agreement

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

SECTION 15.10 Nonwaiver of Rights

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

SECTION 15.11 Force Majeure

(A) In the event of either party being rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder then on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, then the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, as far as possible, be remedied with all reasonable dispatch. In the event either party hereto has with its employees what is commonly known as a labor dispute, each party does hereby reserve unto itself the right to handle said dispute in its own fashion and as it shall, in its uncontrolled discretion, deem best and without interference from the other party.

(B) The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials, and any other causes not within the control of the party claiming a suspension, which by the exercise of due diligence such party shall not have been able to avoid or overcome.

SECTION 15.12 Headings

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof

SECTION 15.13 Nonexclusive Rights

It is understood and agreed that nothing herein contained shall be construed to grant to AIRLINE any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof AIRLINE shall have the right to exclusive possession of the Exclusive Use Space leased to AIRLINE under the provisions of this Agreement.

SECTION 15.14 Inspection of Books and Records

Each party hereto, at its expense and on reasonable notice, shall have the right from time-to-time to inspect the books, records, and other data of the other party relating to the provisions and requirements hereof provided such inspection is made during regular business hours. Each party shall retain all such records for a period of at least three (3) years. On at least thirty (30) days prior written notice, Each party agrees to make any records required hereunder available to the other party at the other parties' offices at the Airport, provided that the party reviewing such records shall keep all information disclosed confidential.

SECTION 15.15 Consent Not to be Unreasonably Withheld

Whenever consent, permission, or prior written approval is required by either CITY or AIRLINE, such consent, permission, or prior written approval is not to be unreasonably withheld or delayed.

SECTION 15.16 Authority of Manager

All rights and obligations of CITY under this Agreement may be exercised by the Manager or the Manager's designee, unless specifically provided otherwise or required by law.

SECTION 15.17 Amendments

This Agreement may be amended in whole or in part without further consideration upon mutual written consent of CITY and AIRLINE.

SECTION 15.18 Vending Machines

AIRLINE shall ensure that no amusement, vending, public pay telephones, or other machines operated by coins, tokens, or credit cards (other than AIRLINE'S self ticketing machines) are installed or maintained in or at AIRLINE's Exclusive Use Space.

SECTION 15.19 Employees of AIRLINE

AIRLINE shall require all of its employees, subcontractors, or independent contractors hired by AIRLINE working in view of the public and about the Terminal Building Area to wear clean and neat attire and to display appropriate identification.

SECTION 15.20 Removal of Disabled Aircraft

AIRLINE shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by the Manager. AIRLINE may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by CITY. If AIRLINE fails to remove any of its disabled aircraft promptly, the Manager may, after informing AIRLINE of his intent to do so, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with Federal laws and regulations. AIRLINE agrees to reimburse CITY for all costs of such removal, and AIRLINE further hereby releases CITY from any and all claims for damage, except as the result of negligent or willful misconduct, to the disabled aircraft or otherwise arising from or in any way connected with such removal by CITY.

SECTION 15.21 Licenses, Fees, and Permits

AIRLINE shall obtain and pay for all licenses, fees, permits, or other authorization or charges as required under Federal, State, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

SECTION 15.22 National Emergency

This Agreement and all the provisions hereof shall be subject to whatever right the U.S. 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.

SECTION 15.23 Time is of the Essence

Time is of the essence in this Agreement.

SECTION 15.24 Notices

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service , postage prepaid , certified , return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:
Attn. Airport Manager
La Crosse Regional Airport
2850 Airport Road
La Crosse, WI 54603

Copy to:
Attn. City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

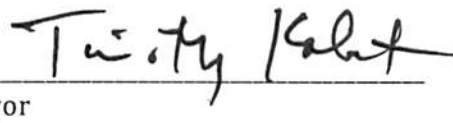
IN WITNESS WHEREOF, the parties or their duly authorized representatives have signed Operating Agreement and Terminal Building Lease the day and year first written above.

DELTA AIR LINES

By 
Title

By Hank Moody
Title **General Manager, Corporate Real Estate**

CITY OF LA CROSSE

By 
Mayor


By 
City Clerk

EXHIBIT B

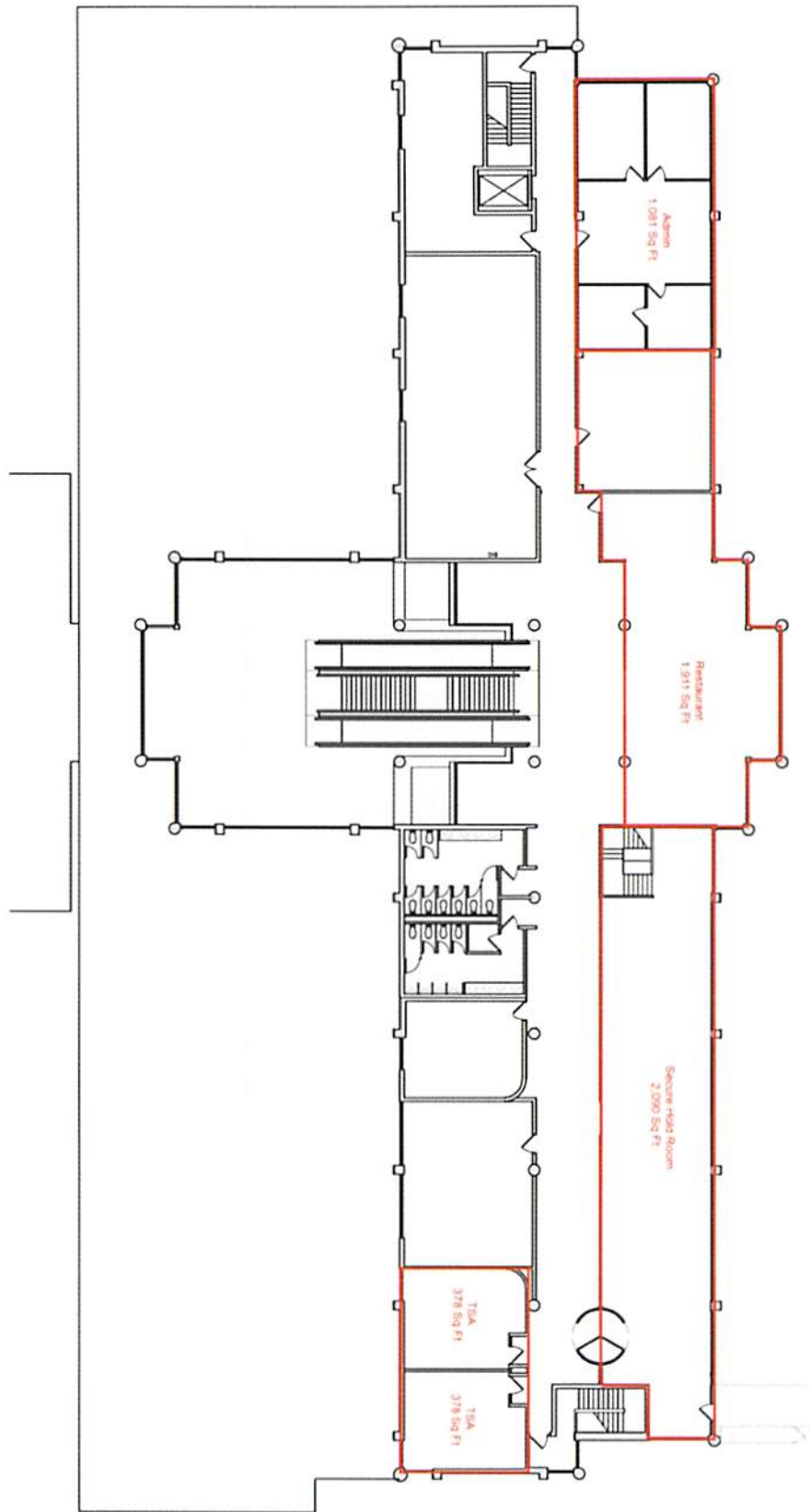


EXHIBIT C - PAGE 1 OF 3

LA CROSSE MUNICIPAL AIRPORT
LA CROSSE, WI
Calculation of Rates and Charges for Calendar Year 2014
Schedule 1 - Calculation of Terminal Building Rental Rates

Terminal Building Airline Leased Space

Airline Exclusive Use Space (Sq. Ft)		
Ticket Counters and Office Space		2,720
Airline Joint Use Space (Sq. Ft)		
Holdrooms		5,327
Baggage Claim Area		2,194
Inbound Baggage Area		1,656
Outbound Baggage Area		2,752
Commuter Arrival Walkways		1,415
Total Joint Use Space		<u>13,344</u>
Total Airline Leased Space (Sq. Ft)		<u>16,064</u>

Airline Terminal Building Requirement

Terminal Building Operations Maintenance Expenses		
Without New Terminal Building Depreciation and Interest Expenses		
(Reference Schedule 3)		\$1,081,028.81
Total Rented Space (Sq. Ft)	20,977	
Terminal Administrative Space	1,081	
Airline Rented Space (Sq. Ft)	16,064	X
Percent of Airline Space		72.83%
		=
Terminal Building Rental Requirements		\$787,313.28
		/
Airline Rented Space (Sq. Ft)		16,064
		=
Compensatory Rental Rate Per Sq. Ft Per Year		<u>\$49.01</u>

Airline Terminal Building Rent

Airline Exclusive Use Space Rent		\$133,310.02
Airline Joint Use Space Rent		
100% Equally Divided Among Airlines		<u>\$654,003.26</u>
Total Airline Terminal Building Charge		<u>\$787,313.28</u>

EXHIBIT C - PAGE 2 OF 3

LA CROSSE MUNICIPAL AIRPORT
LA CROSSE, WI
Calculation of Rates and Charges for Calendar Year 2014
Schedule 2 - Calculation of Landing Fees

Airline Landing Fee Requirement

Airfield Operations Maintenance Expenses (Reference Schedule 3)		\$1,102,163.78
Less Fuel Flowage Fees/Surcharges		\$37,500.00
Landing Fee Requirement		\$1,064,663.78
Air Carrier Landed Weight (1,000 lb. units):		
Delta Airlines	54,332	
American Airlines	61,490	/
Total Air Carrier Landed Weight		115,822
		=
Full Cost Recovery Residual Landing Fee Per 1,000 Pounds of Landed Weight		\$9.19
		-
Initial 2014 Landing Fee Rate (72% Subsidy)		\$2.50
Total Airline Landing Fee Charge		\$289,555.00

LA CROSSE MUNICIPAL AIRPORT
LA CROSSE, WI
Calculation of Rates and Charges for Calendar Year 2014

Schedule 3 - Operations and Maintenance Expenses with Indirect Expenses Allocated to Direct Cost Centers

Budgeted Operations and Maintenance Expenses	Direct Cost Centers				Subtotal	Indirect Cost Centers		Total
	Airfield	Terminal Building	Other Buildings - Areas			Admini- tration	Public Safety	
			Aero	Non-Aero				
Personnel Expenses	\$612,557.62	\$266,329.40	\$67,914.00	\$0.00	\$946,801.02	\$0.00	\$390,345.98	\$1,337,147.00
Supplies	\$51,225.00	\$22,125.00	\$3,825.00	\$0.00	\$77,175.00	\$3,500.00	\$1,325.00	\$84,000.00
Contracted Services	\$12,762.50	\$58,475.00	\$4,512.50	\$0.00	\$75,750.00	\$0.00	\$2,750.00	\$78,500.00
Utilities	\$67,050.00	\$129,900.00	\$6,880.00	\$300.00	\$204,130.00	\$4,000.00	\$23,470.00	\$231,600.00
Repairs and Maintenance	\$122,500.00	\$178,750.00	\$9,425.00	\$3,200.00	\$313,875.00	\$0.00	\$23,625.00	\$337,500.00
Other Operating Expenses	\$3,000.00	\$0.00	\$0.00	\$6,000.00	\$63,000.00	\$197,500.00	\$9,000.00	\$269,500.00
City Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$67,912.00	\$500.00	\$68,412.00
Operations & Maintenance Expenses Before Minor Capital Expenditures, Depreciation, & Interest	\$889,095.12	\$655,579.40	\$92,556.50	\$63,500.00	\$1,680,731.02	\$274,912.00	\$455,015.98	\$2,410,659.00
Minor Capital Expenditures < \$50,000	\$3,075.00	\$24,600.00	\$0.00	\$0.00	\$27,675.00	\$9,825.00	\$0.00	\$37,500.00
Depreciation of Airport Funded Assets	\$16,527.71	\$19,634.91	\$7,073.85	\$198.33	\$43,434.81	\$20,163.80	\$2,512.21	\$66,110.82
Interest Expense	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Operations & Maintenance Expenses	\$889,697.83	\$699,814.31	\$99,630.35	\$63,698.33	\$1,751,840.83	\$304,900.80	\$457,528.19	\$2,514,269.82
Allocation Percentages for Administration Indirect Cost Center Expenses	40.00%	50.00%	8.00%	2.00%	100.00%			
Allocation of Administration Expenses	\$121,960.32	\$152,450.40	\$24,392.06	\$6,098.02	\$304,900.80	-\$304,900.80	\$0.00	\$0.00
Allocation Percentages for Public Safety Indirect Cost Center Expenses	20.00%	50.00%	10.00%	20.00%	100.00%			
Allocation of Safety Expenses	\$91,505.64	\$228,764.10	\$45,752.82	\$91,505.64	\$457,528.19	\$0.00	-\$457,528.19	\$0.00
Total Budgeted Operations & Maintenance Expenses	\$1,102,163.78	\$1,081,028.81	\$169,775.24	\$161,301.99	\$2,514,269.82	\$0.00	\$0.00	\$2,514,269.82

EXHIBIT D

**LA CROSSE REGIONAL AIRPORT
La Crosse, Wisconsin
Calculation of Rates and Charges for Calendar Year 2014**

Schedule 4 - Fee Schedule for Airline Rates and Charges

Landing Fee Rate Per 1,000 Pounds of Landed Weight:

<u>Agreement Year Beginning</u>	<u>Airport Landing Fee Requirement at Full Cost</u>	<u>Airport Landing Fee Subsidy</u>	<u>Signatory Landing Fee Rate (Per 1,000#s LDW)</u>	<u>Non-Signatory Landing Fee Rate</u>
01-Jan-2014	\$9.19	72.8%	\$2.50	\$3.75
01-Jan-2015	TBD	72.8%	TBD	TBD
01-Jan-2016	TBD	72.8%	TBD	TBD

Terminal Building Rental Rate Per Square Foot Per Year:

<u>Agreement Year Beginning</u>	<u>Signatory Terminal Rental Rate (sq ft/yr)</u>
01-Jan-2014	\$49.01
01-Jan-2015	TBD
01-Jan-2016	TBD