

**La Crosse  
Municipal Airport**  
***DISTINCT ADVANTAGES***



**CONCESSION AGREEMENT**

NON-EXCLUSIVE RENTAL CAR CONCESSION  
La Crosse Municipal Airport  
La Crosse, Wisconsin

between

La Crosse Municipal Airport  
City of La Crosse, Wisconsin

and

Midwest Car Corporation  
Concessionaire

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**RENTAL CAR CONCESSION  
La Crosse Municipal Airport  
La Crosse, Wisconsin**

THIS CONCESSION AGREEMENT ("**Agreement**"), made and entered into this 15<sup>th</sup> day of July, 2013, by and between the City of La Crosse (the "**City**"), a municipal corporation and existing under the laws of the State of Wisconsin, whose address is 400 La Crosse St., La Crosse, Wisconsin 54601, hereinafter referred to as "**City**" and "**Midwest Car Corporation**" operating as National Car Rental and Alamo Rent-A-Car, (hereinafter referred to as "**Company**"), a corporation with its office and address being 1450 Delanglade Street, Kaukauna WI 54130, with a mailing address of PO Box 560, Kaukauna WI 54130.

WITNESSETH:

WHEREAS, City controls, owns, operates, and maintains an airport in the City of La Crosse, County of La Crosse, State of Wisconsin, known as La Crosse Municipal Airport (hereinafter referred to as "**Airport**"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Company to provide rental car concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

**DEFINITIONS**

The following terms and phrases shall have the following meanings for purposes of this Agreement:

1. "**City**" shall mean the public body corporation existing under the laws of the State of Wisconsin which controls, operates, and maintains the La Crosse Municipal Airport. The Aviation Board is authorized as agent for City within this Agreement.
2. "**ACDBE**" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
3. "**Airport Manager**" shall mean the Airport Manager of the City's Airport, or his or her designee.
4. "**Aviation Board**" shall mean the Board responsible for overseeing Airport operations.
5. "**Gross Revenues**" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Company for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Company. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Company by customers for all sales made and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Company's operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in

which or place at which the vehicles or other products or services are furnished to Company's customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Company's operations which are separately stated on customers' rental contracts and collected from customers of Company;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFC's" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City Resolution #2012-12-043, as may be amended;
- Amounts received as insurance proceeds for loss of or damages of vehicles or other property of Company;
- Amounts received from the sale of vehicles off-Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Company's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid to third parties for windshield replacement, towing, parking tickets, impound fees and other governmental fines and fees.

6. "Operations Year" shall mean August 1 through July 31 annually.

7. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, station wagons, four-wheel drive vehicles, passenger vans, "Suburban"-type vehicles, and pick-up trucks rated one-ton or less. Company shall not park, store or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein. Employee parking shall only be allowed in those areas designated by the Airport.

8. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or, the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit or any other consideration.



9. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car company rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car company collects revenue from the customer. Late returns (after twenty four (24) hours) shall be considered a Transaction Day.
10. "Terminal Building" shall mean the terminal building at the Airport.
11. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises and which cannot be removed without material damage to the Premises.
12. "Personal Property" shall mean all movable property of the Company not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
13. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
14. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.

#### **SECTION 1 – LEASED PREMISES**

- a. City hereby leases to Company and Company hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Two Hundred Twenty Seven (227) square feet of counter/office/queuing area C in the terminal building and Block #4 in the ready return area containing approximately 43 ready/return parking spaces outside and adjacent to the terminal building. Said Leased Premises is more particularly shown on **Exhibit A1 and Exhibit A2** attached hereto and by this reference made a part hereof.
- b. Company agrees that its Leased Premises have been inspected by Company and are accepted and will be occupied by Company on an "as is" basis. The Company specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness. Additionally, Company understands that the City intends to remodel and/or reconfigure the terminal building during the term of this agreement and that this proposed remodel and/or reconfiguration may include a relocation and resizing of the Leased Premises.

#### **SECTION 2 - TERM**

The term of this Agreement is for a five (5) year period commencing on August 1, 2013 and terminating on July 31, 2018 unless sooner terminated or canceled as hereinafter provided.

#### **SECTION 3 - USES, PRIVILEGES, COBRANDING AND OBLIGATIONS**

Company shall have the following uses, privileges, and obligations in connection with its use of

the Leased Premises:

- a. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport. Co- Branding by company is limited to two brands per concession space specifically those listed in their submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Company understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- b. The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that the rental car customers of Company will operate the vehicle rented only from the ready spaces provided herein, and Company shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than ¾ ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Airport Manager.
- c. The right of ingress and egress to and from the Premises, over Airport roadways, are subject to such reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- d. Company shall install no signs on or about the Premises without the prior written approval of the Airport Manager, said approval being solely discretionary with the Airport Manager. The City intends to implement and enforce signage standards in the terminal, including rental car counter, backwall standards, and parking space signage throughout the Airport. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Airport Manager.
- e. The right for Company's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City, subject to the payment of reasonable charges therefore, as set by the Aviation Board.
- f. *Airport Concession Disadvantaged Business Enterprise Program*
  1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
3. Each year Company no later than (90) days following end of each Operational Year shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past year, a description of the nature of the services performed by and/or items purchased from each firm named, and the dollar value of each transaction.

**SECTION 4 - RESTRICTIONS ON USES AND PRIVILEGES**

The Premises shall be used only for the purposes specified in this Agreement. Company understands and agrees that City has the right to grant up to three additional privileges under separate agreements for in-terminal rental car operations to other companies.

**SECTION 5 - PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS**

*Subsection 5.1 - Privilege Fee, Rent and Fees.*

- a. *Privilege Fee.* As consideration for the privilege of operating the concession hereunder, Company shall pay to City each contract year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Receipts, hereinafter defined, as follows:

1. Privilege Fee – the greater of either:
    - a. ten percent (10%) of the Company's annual Gross Revenues ("Percentage Privilege Fee");
- OR
- b. the respective yearly amount shown below as the Company's Minimum Annual Guaranteed fee ("MAG"):

August 1, 2013 to July 31, 2014	\$ 60,000.00	
August 1, 2014 to July 31, 2015	\$ 60,000.00	
August 1, 2015 to July 31, 2016	\$ 60,000.00	
August 1, 2016 to July 31, 2017	\$ 60,000.00	
August 1, 2017 to July 31, 2018	\$ 61,000.00	

2. For purposes of this Agreement, an "Operations Year" for the MAG shall be August 1 through July 31 annually.

3. Each Company's total MAG for the term of this Agreement shall be used to determine its relative order of selection of 1) Counter/Office/Queuing space in the Terminal and 2) Block of stalls in the Ready/Return area.
  4. Monthly payment shall be the greater of 1/12<sup>th</sup> of the respective year's MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1<sup>st</sup>) day of each month. On or before the 20<sup>th</sup> of each month the Company shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit B, attached hereto and made a part hereof.
  5. In the event of a major traffic reduction at LSE, during the term of this Agreement, the MAG hereinabove provided for in this Section 5.1.a above shall be abated for the period of time the condition exists. A major traffic reduction at LSE shall be defined as a twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at LSE during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.
- b. Rent - All Rents set forth in this Section 5, Paragraph B, Subsection 1, are subject to Wisconsin sales tax and other applicable taxes which shall be collected by the City in addition to the rent listed in a, and b below:
1. Rent for Premises located in the Terminal Building Area  
Company shall pay to the City, in advance, on the 1<sup>st</sup> day of each month the following rent:
    - a. For the period commencing August 1, 2013 through December 31, 2013, Company shall pay the sum of Forty One Dollars and Nineteen Cents (\$41.19) per square foot per annum for Two Hundred Twenty Seven (227) square feet of counter/office/queuing position in the Terminal Building. Thereafter, commencing January 1, 2014, January 1, 2015, January 1, 2016, January 1, 2017 and January 1, 2018 the per square foot per annum rent shall be the same per square foot per annum rate paid by the Airlines serving the Airport.
    - b. For the period commencing August 1, 2013 through December 31, 2014, Company shall pay the sum of Two Thousand Three Hundred Sixty Five Dollars (\$2,365.00), per month for Ready Return Block #4 as shown on Exhibit A2. On January 1 of each year for the period of this Lease, commencing January 1, 2015, the rental amounts for the parking block, shall be adjusted in accordance with the Consumer Price

Index – National Index for All Urban Consumers for the previous calendar year.  
Said adjustment shall be computed as follows:

$$\begin{aligned} &\text{Most recent year's rate x} \\ &\quad (\text{CPI for November of most recent year} / \\ &\quad \text{CPI for November of the next most recent year}) = \text{New Rate} \end{aligned}$$

- c. The Company shall collect the CFC's on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
- d. Any and all payments due to the City by Company shall be remitted to the following address:

La Crosse Municipal Airport  
Attn: Airport Manager  
2850 Airport Road  
La Crosse, WI 54603

- e. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Company within thirty (30) days after the Airport's acceptance of the final Certified Statement described in this Section. Company shall submit separate system generated reports for each brand name operated.

*Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.*

- a. Monthly Statements; Books and Records. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Company shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Receipts during the preceding month upon which the percentage payments to City set forth in Subsection 5.1 A. (1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Company. City reserves the right to change the form of the monthly statement and to require the submission by

Company of other information pertaining to the Gross Receipts hereunder, and Company agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Company shall keep full and accurate books and records showing all of its Gross Receipts hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy and audit such books and records, including State of Wisconsin sales tax return records. Company hereby agrees that all such books and records will be made available to City for at least seven (7) years following the period covered by such books and records.

- b. Annual Certified Statements. Each year during the term of this Agreement, Company shall provide to City a written statement, certified by an Independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Company to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Company, to be received by City within ninety (90) days of the end of each contract year. Such statement shall also contain a list of the Gross Receipts, by month, as shown on the books and records of Company and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.
- c. Delinquent Rentals and Fees. Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, Company shall pay to City a late payment fee of Fifty Dollars (\$50.00) per occurrence plus interest thereon at the rate of one and one-half percent (1.5%) per month from the date such payment was due and payable until paid.

*Subsection 5.3 Audit.* City reserves the right to audit Company's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Receipts and Privilege Fee calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Company has understated the Gross Receipts received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Company. Any additional Privilege Fee due shall forthwith be paid by Company to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

## **SECTION 6 - INITIAL INVESTMENT**

*Subsection 6.1 Initial Minimum Investment.* No initial minimum investment is required during the initial term of this agreement.

## **SECTION 7 - INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES**

### *Subsection 7.1 - Building Services*

- a. **City Improvements and Services.** City shall initially insure and provide occupancy of the Leased Premises to Company with said Leased Premises meeting all federal, state and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal Building. Heating and air conditioning and electrical service are provided to the Leased Premises only. If Company requires additional lighting, electrical power, water, telephone outlets, or adjustments to the air-conditioning system, such additional improvements or services shall be subject to the prior written approval of Airport Manager, and any such approved improvements or services shall be made at Company's expense.
- b. **Company's Right to Additional Services.** Company shall have the right, at its own expense, to request and receive telephone services or communication systems, provided that any such services or systems shall require the written approval of Airport Manager before installation.

### *Subsection 7.2 - Approval of Plans and Specifications; Provision of Drawings.*

- a. **General.** Any improvements to be made to or upon the Leased Premises by Company, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Airport Manager. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Airport Manager before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Airport Manager as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Airport Manager for review prior to commencement of construction; after final approval by Airport Manager, Airport Manager shall return to Company one (1) approved copy for Company's records and shall retain one (1) approved copy as an official record thereof.
- b. **Improvements Conform to Statutes, Ordinances, Etc.** All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Company, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Company.
- c. **Approvals Extend to Architectural and Aesthetic Matters.** Approval of City shall extend to and

include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Company to resubmit any such layout or design proposals until they meet Airport Manager approval.

- d. Disapprovals. In the event of disapproval by City of any portion of any plans or specifications, Company shall promptly submit necessary modifications and revisions thereof for approval by Airport Manager. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Airport Manager.
- e. Provision of As-Built Drawings. Upon completion of any construction project, Company shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Company agrees that, upon the request of City, Company will inspect the Leased Premises jointly with City to verify the as-built drawings.

#### **SECTION 8 - TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.**

*Subsection 8.1 Title.* All improvements made to the Leased Premises by Company, and any additions and alterations thereto made by Company, shall be and remain the property of Company until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements, except for Trade Fixtures, personal property, and expendables, shall become the property of City, at no cost to City.

*Subsection 8.2 Structural Alterations.* Company shall make no structural alterations to the Leased Premises without the prior written consent of Airport Manager.

*Subsection 8.3 Alterations and Improvements to Airport.* Company acknowledges that from time to time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which may temporarily affect Company's operations hereunder. Company agrees to accommodate City in such matters, even though Company's own activities may be inconvenienced, and Company agrees that no liability shall attach to City, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Company under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Airport Manager after consultation with Company. Company agrees that if relocation is required that Company shall move its operations as reasonably directed by Airport Manager and said move is at Company's sole cost and expense.

*Subsection 8.4 Removal and Demolition.* Company shall not remove or demolish, in whole or in



part, any Leasehold Improvements upon the Leased Premises without the prior written consent of Aviation Board which may, at its sole discretion, condition such consent upon the obligation of Company, at Company's cost, to replace the same by an improvement specified in such consent.

## **SECTION 9 - MAINTENANCE OF PREMISES**

### *Subsection 9.1 Airport Maintenance Obligations.*

- a. General Maintenance and Operation. City agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith.
- b. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building and shall provide, or cause to be provided, the washing of all windows (on the outside of the Terminal Building only) in the Leased Premises at periodic intervals.
- c. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.

### *Subsection 9.2 Company's Maintenance Obligations.*

- a. Company's General Obligations. Except for maintenance of the Terminal Building, as provided in Subsection 9.1, Company shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Company shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Company or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Airport Manager. Company shall be obligated, without cost to City, to provide custodial service to Leased Premises.
- b. Hazardous Conditions. Upon discovery, Company shall immediately give oral notice to City of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the Airport Manager. At the direction of said Manager, Company shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- c. Trash and Refuse. City shall provide, at no cost to Company, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the

Leased Premises. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Company shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor.

- d. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Company shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.

## **SECTION 10 - LIENS, PAYMENT, AND PERFORMANCE BONDS**

*Subsection 10.1 Construction Surety Bond.* Company shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Company or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Wisconsin and satisfactory to and approved by City with Company's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

*Subsection 10.2 Compliance with Federal Aviation Regulations and Security Requirements Parts 49 CFR Part 1452 and 14 CFR Part 139.* Company agrees to comply with Federal Aviation Regulations, and 1452 (Airport Security) and the Cities policies as outlined in Cities Federal Aviation Administration approved Operations Plan and Airport Security Plan. Company further agrees that any fines levied upon the City or Company through enforcement of these regulations because of acts by Company's employees, agents, suppliers, guests, or patrons shall be borne by Company to the extent said acts contributed to said fines.

*Subsection 10.3 Security.* During the term of this Agreement, the City shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of Company's Minimum Annual Guarantee for each year hereunder, in order to secure the performance of all of Company's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

## **SECTION 11 - OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES**

*Subsection 11.1 Hours of Operation.* Company shall actively operate in the Leased Premises and shall use a business-like operation therein. The Company shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving or departing from the terminal will be accommodated. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Company may advise the Airport Manager of Company's analysis of the optimum arrangements, but the final determination shall be made by the Airport Manager and Aviation Board based on their analysis of necessary service to the public.

*Subsection 11.2 Delivery of Goods.* Company shall arrange for the timely delivery of all Motor Vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City. Company shall abide by all Transportation Security Administration (TSA) requirements for parking of Motor Vehicles near the terminal building.

*Subsection 11.3 Utilities.*

- a. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Company's activities.
- b. City shall provide electricity to the Leased Premises by means of wiring installations, and Company shall make such connections as required and permitted by building code. At no time shall Company's use of electric current exceed the capacity of the wiring installation in place.

## **SECTION 12 - QUALITY AND CHARACTER OF SERVICE**

*Subsection 12.1 Type of Operation.* Company shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Airport Manager, does not unduly annoy, disturb, or offend others at the Airport.

*Subsection 12.2 Services to the General Public.* Company understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

*Subsection 12.3 Additional Compliance.* Company shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

*Subsection 12.4 Personnel.*

- a. **General.** Company shall maintain a sufficient number of properly trained personnel to ensure that all customers of Company receive prompt and courteous service. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Clothing will be neat and clean and present a professional appearance. Airport Manager shall have the right to object to the demeanor, conduct, and appearance of any employee of Company, or any of its invitees or those doing business with it, whereupon Company shall take all steps necessary to remedy the cause of the objection.
- b. **Manager.** The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Company. Company shall cause such manager to be available during normal business hours, and Company will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

**SECTION 13 - SIGNS AND ADVERTISING**

*Subsection 13.1 Definition of Signs.* For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like.

*Subsection 13.2 Right to Install.* Company shall have the right to install and operate upon or in the Leased Premises at Company's sole cost and expense, signs containing its name and representing its business. Company acknowledges City's desire to maintain a high level of aesthetic quality in the Terminal Building and in all concession facilities throughout the Terminal Building. Therefore, Company covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, it will submit to City the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Premises and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of the Airport Manager as to the size, design, content, and location. Handwritten, or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the Airport Manager at any time during the term of this Agreement, Company shall install, remove, or modify any signs which the Airport Manager deems necessary or unnecessary for identification or information to the public, passengers, or other Airport users. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not limit the Airport Manager's authority to require removal of any unapproved sign.

*Subsection 13.3 Signs and Fixtures Outside Premises.* Company shall not place or install any

racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Airport Manager.

*Subsection 13.4 Removal of Signs.* Upon the expiration or sooner termination of this Agreement, Company shall, if requested by the Airport Manager, remove any and all identification signs and similar devices placed by Company on or in the Leased Premises or the terminal building. In the event of the failure on the part of Company to so remove each and every sign as requested by the Airport Manager, the Airport Manager may perform such work and, upon demand, Company shall pay the cost thereof to City.

#### **SECTION 14 – NON-DISCRIMINATION**

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, pursuant to law, it is unlawful and Company agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Company shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

#### **SECTION 15 - IDEMNIFICATION AND INSURANCE**

*Subsection 15.1 Indemnification.* To the fullest extent allowable by law, Company hereby indemnifies and shall defend and hold harmless, at Company's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Company, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this

Agreement, regardless if liability without fault is sought to be imposed on City. Company's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Company shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Company's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

*Subsection 15.2 Company to Provide General Liability and Automobile Insurance.* Company shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$5,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Insurance of not less than \$5,000,000.00 per occurrence;
- 3) To the extent that Company employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Wisconsin statutory limits.

*Subsection 15.3 Company to Provide Property, Fire and Allied Insurance.* Company, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Company and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of leasehold improvements, furnishings, fixtures and equipment.

*Subsection 15.4 Both Company and City to Carry Fire Insurance.* It is understood that both Company and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Company), and said Insurance Coverage authorizes a waiver of subrogation between City and Company, and the parties wish

to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Company, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Company collects under its Insurance Coverage, Company waives any and all claims against City, its agents, servants, and employees, for loss or damage to Company's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

*Subsection 15.5 Insurance Certificate.* A certificate evidencing insurance required by Subsection 15.2 and 15.3, and listing the City of La Crosse as additional insured, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Company upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Company shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

*Subsection 15.6 Company Failure to Provide Certificates.* In the event that Company shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Company of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Company, and Company agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

## **SECTION 16 - DAMAGE OR DESTRUCTION OF PREMISES IN TERMINAL BUILDING**

*Subsection 16.1 Partial Damage.* If all or a portion of the Terminal Building Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Subsection 16.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the cost and expenses insured in such repair to the extent that the damage is caused by the negligent act or omission of Company, its sublessees, agents, or employees.

*Subsection 16.2 Extensive Damage.* If the damages referred to in Subsection 16.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of

Subsection 16.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Company, its sublessees, agents, or employees.

*Subsection 16.3 Complete Destruction.* In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by City's Airport Manager as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Company, its sublessees, agents, or employees; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Company may cancel this Agreement in its entirety.

*Subsection 16.4 Limits of City's Obligations Defined.* It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Terminal Building Premises to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Company and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

## **SECTION 17 - CANCELLATION**

*Subsection 17.1 Cancellation by Company.* Company may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Company is not in default in the payment of any fees or charges to City:

- a. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- b. The inability of Company to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Company or City, preventing Company from



operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Company.

- c. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Company of written notice to remedy the same.

*Subsection 17.2 Cancellation by City.* City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- a. Company shall file a voluntary petition in bankruptcy; or
- b. Proceedings in bankruptcy shall be instituted against Company and Company is thereafter adjudicated bankrupt pursuant to such proceedings; or
- c. A court shall take jurisdiction of Company and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or
- d. A receiver of Company's assets shall be appointed; or
- e. Company voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Company is involved; or
- f. Any assignment is made by Company for the benefit of its creditors; or
- g. The material breach by Company of any of the covenants or agreements herein contained and the failure of Company to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Company notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Company, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
- h. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Company, for a period of at least thirty (30) days, from its Airport operation.

*Subsection 17.3 Termination.* Should an early termination of this Agreement occur pursuant to the terms of Subsection 17.2 hereof, City shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

*Subsection 17.4 Notice of Termination.* If any of the events enumerated in Subsections 17.1 and

17.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

## **SECTION 18 - PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION**

*Subsection 18.1 Rights Upon Termination or Cancellation.* Upon proper termination or cancellation of this Agreement for any reason except those outlined in Subsections 17.1 and 17.2, City shall have the right to require removal by Company of all Trade Fixtures, personal property, and expendables owned by Company; and Company shall immediately remove such Trade Fixtures, personal property, and expendables. Company shall reimburse City for the cost of any repairs required as a result of Company's removal of said Trade Fixtures, personal property, and expendables. At the request of Company, City may, at its discretion, take title to any or all such Trade Fixtures, personal property, or expendables, in which event City shall pay to Company the fair market value of each such fixtures, property, or expendables as of the date of such termination.

*Subsection 18.2 Rights Upon Termination Because of Default by City.* In the event this Agreement is canceled by Company for any of the reasons outlined in Section 17.1, damages to the Company shall be limited as follows:

- a. Leasehold or Fixed Improvements. With respect to Leasehold Improvements paid for by Company from its own funds, said damages shall be Net Book Value of said improvements, determined on a straight-line basis over the term of the agreement. Upon payment by City to Company of said damages, all such Leasehold Improvements shall become the sole property of City. Company may, at its option, remove such permanent improvements in lieu of accepting said Net Book Value.
- b. Personal Property and Proprietary Trade Fixtures. Except as provided herein above, Company shall remove all personal property and Trade Fixtures, and shall reimburse City for the cost of any repairs required as a result of Company's removal of such property and fixtures.

## **SECTION 19 - NONWAIVER OF RIGHTS**

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

## **SECTION 20 - SURRENDER OF POSSESSION**

Company shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Company or City, reasonable use and wear thereof excepted. In addition to any lien provided by Wisconsin law, City shall have a specific lien on all property of Company, and related equipment on the Leased Premises as security for nonpayment. Company shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees.

#### **SECTION 21 - TAXES AND LICENSES**

Company shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. City shall assist Company where necessary in obtaining said permits.

#### **SECTION 22 - INSPECTION OF PREMISES**

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

#### **SECTION 23 - HOLDING OVER**

Should Company holdover said Leased Premises after this Agreement has terminated in any manner, Company shall continue such holding over only at sufferance to City. In the event of such holding over, City shall be entitled to collect from Company, 1.10 times the amount of Year Five's minimum annual guarantee. All other terms and conditions in such holdover shall be the same as herein provided.

#### **SECTION 24 - QUIET ENJOYMENT**

City agrees that Company, upon payment of the fees and charges and all other payments to be paid by Company under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Company to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Agreement.

#### **SECTION 25 - NO LIENS**

Company shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Company, and shall keep said Leased Premises and Company's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Company's act or omission.

## **SECTION 26 - SECURITY AGREEMENTS**

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire and police protection similar to that afforded to other Landside tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Company shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Company, shall not in any way be construed to limit or reduce the obligations of City hereunder.

## **SECTION 27 - AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES**

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the La Crosse Municipal Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

## **SECTION 28 - RIGHTS AND PRIVILEGES OF CITY**

- a. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Company agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.
- b. City's Airport Manager and/or the City Attorney are hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Company in connection with the rights herein granted.
- c. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the Aviation Board and/or City Council, their successors or assigns.
- d. The Airport Manager or designee may enter upon the Leased Premises, now or hereafter leased to Company hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- e. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns, as the City deems appropriate, regardless of the desires or views of Company, and without interference or hindrance.

- f. During the time of war or National Emergency, City shall have the right to lease the landing area of the Airport, or any part of La Crosse Municipal Airport, thereof, to the United States Government for military or national use, and if any lease is executed, the provisions of this instrument insofar as they are inconsistent with the provision of the lease to the Government, shall be suspended.
- g. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of La Crosse Municipal Airport, and the right to pursue all operations of the La Crosse Municipal Airport.
- h. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Company from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- i. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Company.
- j. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification or Security Requirements, FAR Part 139 and CFR 1542 respectively, result in major expenditures to City due to Company's tenancy on the La Crosse Municipal Airport. If said renegotiation is desired, written notice must be given to Company sixty (60) days prior to such renegotiations.
- k. City reserves the right to relocate the Leased Premises upon the completion of the Terminal area remodeling or expansion. City will not be liable for the costs associated with the moving or reinstallation of Company's equipment.

#### **SECTION 29 - ACCESS CONTROL**

- a. Company shall upon termination of this agreement return all issued keys to City. If all issued keys are not returned to City at the termination of this Agreement Company shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.
- b. Company is responsible for all keys issued to employees of Company. If a key is lost, Company shall immediately notify City and shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.
- c. Company is ultimately responsible for all parking cards issued for employee parking including all fees levied for failure to return said cards.

### **SECTION 30 – NO PERSONAL LIABILITY**

Under no circumstances shall any trustee, officer, official, commissioner, Manager, member, partner or employee of City have any personal liability arising out of this Agreement, and Company shall not seek or claim any such personal liability.

### **SECTION 31 – GOVERNING LAW**

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

### **SECTION 32 – JURY TRIAL WAIVER**

The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

### **SECTION 33 – NOTIFICATION**

Company shall:

- a. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Company with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Company contained in this Agreement to be untrue.
- c. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Company or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Company or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Company or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

### **SECTION 34 – SEVERABILITY**

The provisions of this Agreement are severable. If any provision or part of this Agreement or the

application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

**SECTION 35 – ASSIGNMENT, SUBLET, AND TRANSFER**

Company shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Company shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

**SECTION 36 – NO WAIVER**

The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

**SECTION 37 – CONFLICTS OF INTEREST**

Company covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Company further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Company or its employee must be disclosed to City.

**SECTION 38 – POLITICAL ACTIVITIES**

Company shall not engage in any political activities while in performance of any and all services and work under this Agreement.

**SECTION 39 – ENTIRE AND SUPERSEDING AGREEMENT**

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

**SECTION 40 – AMENDMENT**

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

**SECTION 41 – TIME COMPUTATION**

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

**SECTION 42 – 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:	La Crosse Municipal Airport	Copy to: Attn. City Attorney
	Attn: Airport Manager	City of La Crosse
	2850 Airport Rd	400 La Crosse Street
	La Crosse, WI 54603	La Crosse, WI 54601

City's notice to Company shall be deemed effective three days after mailing first class United States Post Office mailing. Company shall identify in writing and provide to City the contact person and address for notices under this Agreement.

**SECTION 43 – PUBLIC RECORD LAW**

Company understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Company agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Company agrees to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, Company agrees to indemnify and hold harmless City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Company's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Company decides not to retain its records for a period of seven (7) years, then it shall provide



written notice to City whereupon La Crosse shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

#### **SECTION 44 – CONSTRUCTION**

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

#### **SECTION 45 – NO THIRD PARTY BENEFICIARY**

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

#### **SECTION 46 – COMPLIANCE WITH LAW**

The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

#### **SECTION 47 – FORCE MAJEURE**

City shall not be responsible to Company and Company shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

#### **SECTION 48 – GOOD STANDING**

Company affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Company is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

**SECTION 49 - INDEPENDENT CONTRACTORS**

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

**SECTION 50 - GOVERNMENTAL APPROVALS**

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

**SECTION 51 – AUTHORITY**

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

**SECTION 52 – COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

**SECTION 53 – SURVIVAL**

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

**SECTION 54 – MORE FAVORABLE TERMS**

In the event the City shall enter into any lease or agreement with any other rental car operator within the Airline Terminal building, that agreement will not contain more favorable terms than this Agreement, unless the same rights, privileges, and more favorable terms are concurrently made available to Company.



EXHIBIT A1

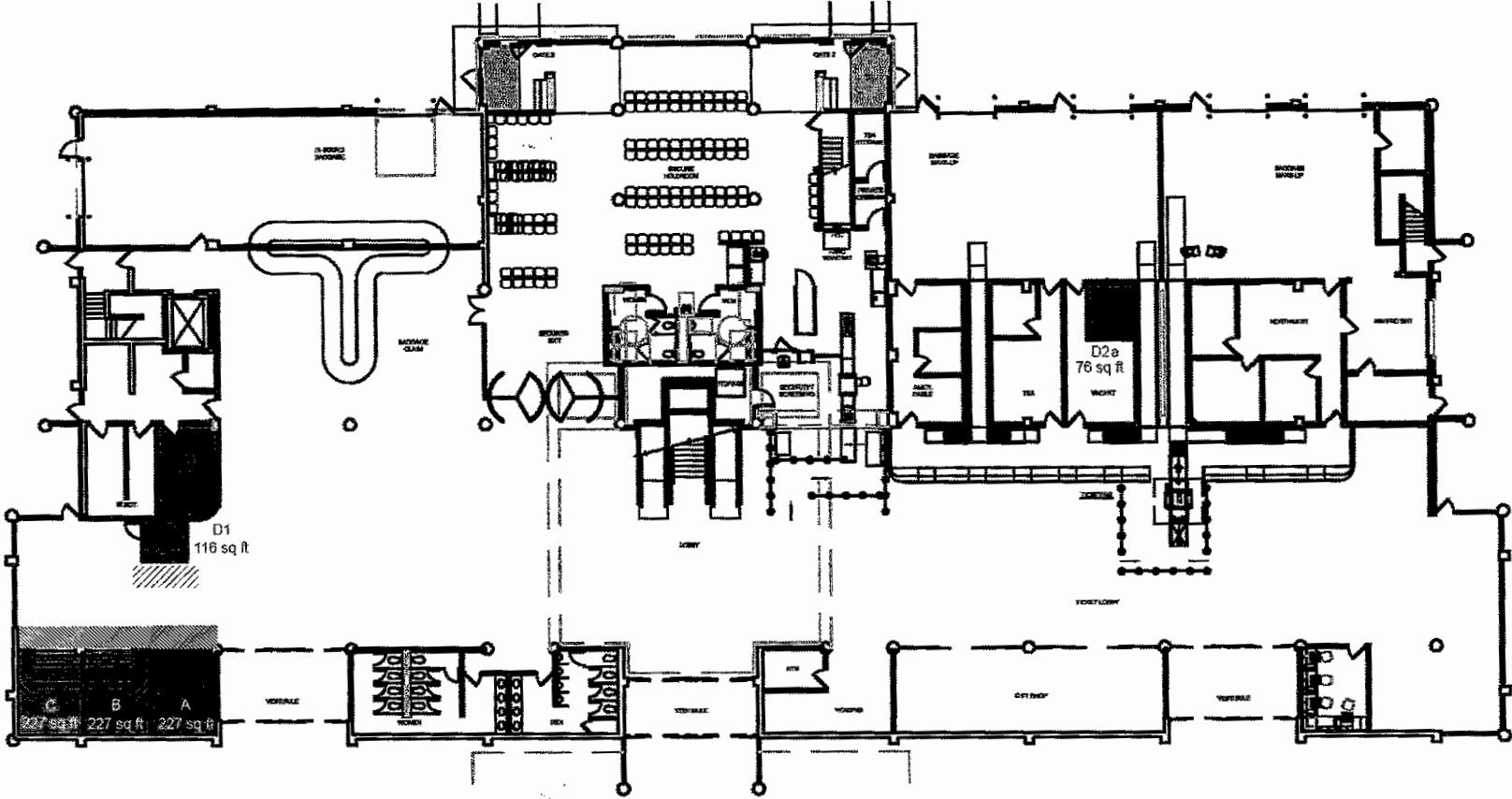


EXHIBIT A2

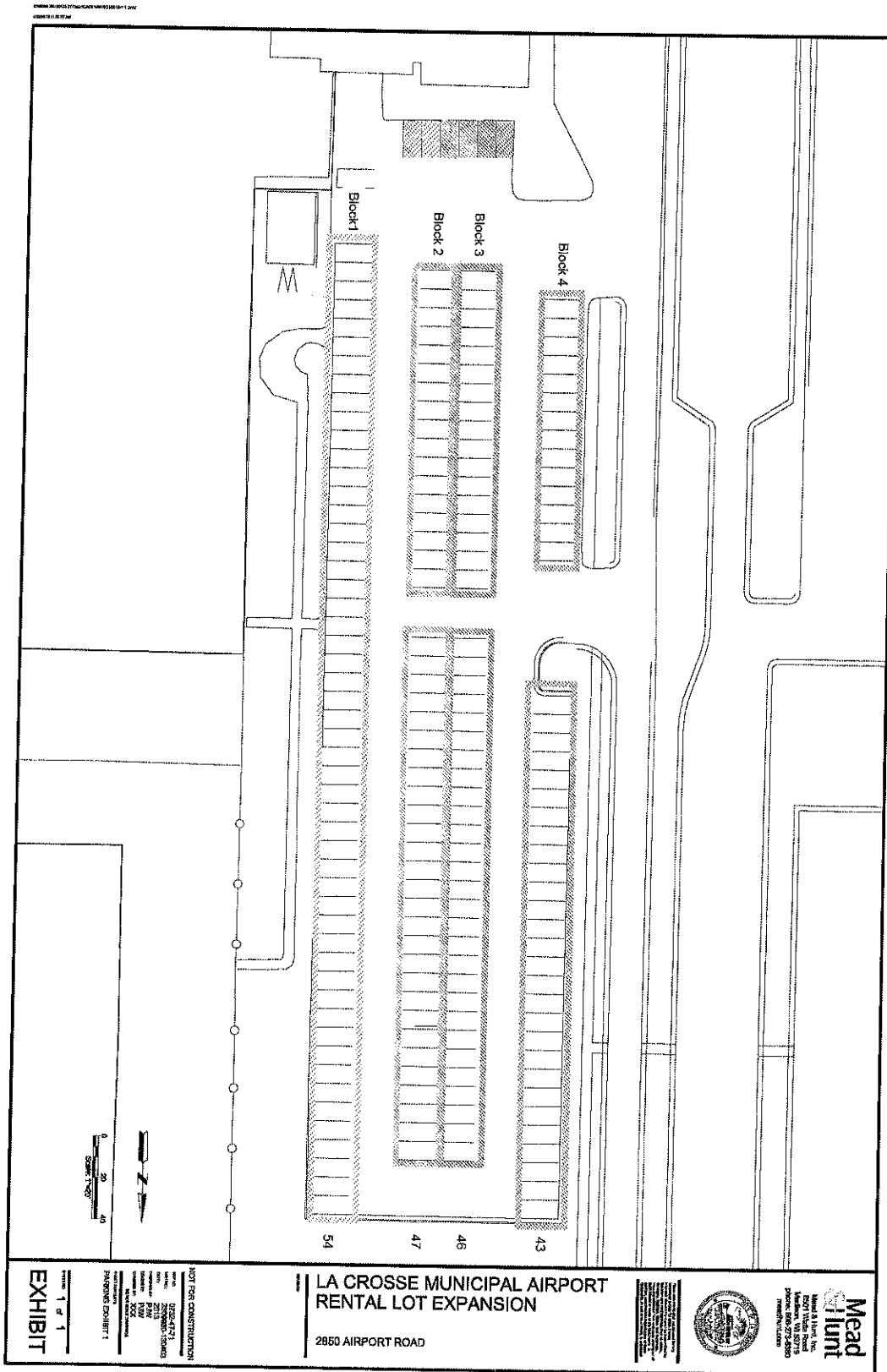


EXHIBIT B

LA CROSSE MUNICIPAL AIRPORT  
RENTAL CAR MONTHLY REPORT OF GROSS REVENUES  
FOR MONTH OF \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone # \_\_\_\_\_

GROSS RENTAL REVENUE: \_\_\_\_\_

Airport Fee (10%) \_\_\_\_\_

Less Monthly Guarantee paid 1<sup>st</sup> of month: \_\_\_\_\_

(1) Privilege Fee Balance Due: \_\_\_\_\_

Number of Rental Days: \_\_\_\_\_

(2) CFC Due (@ \$3.00 per Rental Day): \_\_\_\_\_

Amount Due with this report (1) +(2): \$ \_\_\_\_\_

Company Official Signing and Certifying accuracy of Information on this report:

Signature \_\_\_\_\_

Typed Name & Title \_\_\_\_\_

Date signed \_\_\_\_\_

REMIT THIS FORM AND PAYMENT TO: LA CROSSE MUNICIPAL AIRPORT  
2850 AIRPORT ROAD  
LA CROSSE, WI 54603