

**OPERATIONS/AIRPORT RESCUE AND FIREFIGHTING SERVICE AGREEMENT
BETWEEN THE CITY OF LA CROSSE AND PRO-TEC FIRE SERVICES, LTD.**

This Services Agreement is made as of the _____ day of _____, _____, by and among the City of La Crosse, a Regional corporation, ("City") and Pro-Tec Fire Services, LTD., ("Service Provider").

WHEREAS, the Aviation Board of the City of La Crosse authorized this Service Agreement with Pro-Tec Fire Services, LTD, and

WHEREAS, it is recognized that the Service Provider is an independent contractor, and that nothing in this contract established an employer/employee relationship between the City and the Service Provider or the Service Provider's employees for any purpose whatsoever.

NOW, THEREFORE, IN CONSIDERATION of the covenants set forth herein and other good and valuable considerations, receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. TERM: The term of this agreement shall commence on _____, 2014 and terminate on _____, 2015. City and Service Provider shall negotiate further terms and scope of services provided at least ninety (90) days prior to expiration of this Service Agreement.
2. CONSIDERATION: The City owns and operates the Airport located in the City of La Crosse, WI and the City is in need of Airport Operations/Rescue and Firefighting Services in order to operate the Airport in compliance with 14 CFR Part 139. The Service Provider is engaged in the business of providing Airport Operations/Rescue and Firefighting (ARFF) Services and shall offer said services and other services designated in the Service Agreement to the Airport as consideration for entering into and enforcing this Service Agreement.
3. COMPENSATION: In exchange for the services provided within this Service Agreement, the City shall pay Service Provider a monthly fee not to exceed fifteen thousand four hundred sixteen dollars and sixty six cents (\$15,416.66). Additionally, City shall pay Service Provider for services beyond the scope of this Service Agreement at hourly rates for each individual classification so agreed upon within "**Appendix B**" to this Service Agreement when pre-approved by the Airport Manager. Such payment will be made to Service Provider within forty five (45) days of invoice. Invoices shall be provided to City no later than the twentieth (20th) of each month in which Service Provider is requesting payment.
4. INSURANCE
 - 4.1. Service Provider shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:
 - 4.1.1. General Liability Insurance of not less than \$5,000,000.00 per occurrence for bodily injury, personal injury and property damage;
 - 4.1.2. Automobile Insurance of not less than \$1,000,000.00 per occurrence;

- 4.1.3. To the extent that Company employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Wisconsin statutory limits.
- 4.2. A certificate evidencing insurance required by this section, and listing the City of La Crosse as additional insured, shall be filed with City 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.

5. RIGHTS, PRIVILEGES, AND OBLIGATIONS OF THE CITY

- 5.1. The City shall have the right to enforce and adopt from time-to-time reasonable rules and regulations by Ordinance, Resolution, or otherwise with respect to the use and operation of the Airport together with its buildings and equipment, which rules and regulations the Service Provider agrees to observe and obey.
- 5.2. City rules and regulations as adopted shall be consistent with safety needs of the Airport; Federal Statutes, Regulations, State Statutes, and policies of the Federal Aviation Administration ("FAA").
- 5.3. The Airport is presently classified as an Index "B" Airport. If the Airport is reclassified to a different ARFF Index (for whatever reason or period of time), if the FAA modifies the requirements for ARFF Service, or if scheduled air carriers modify their requirements for ARFF services through schedule or equipment changes, this Service Agreement may be modified accordingly with respect to the number of personnel and hours of service to be provided by the Service Provider, with payment to the Service Provider to be adjusted accordingly by agreement of both City and Service Provider.
- 5.4. Neither the City nor the Service Provider can anticipate or control any future Federal, State, or other authorities' mandates that may affect wages and/or benefits during the term of this Service Agreement. Therefore, the City and Service Provider agree that in the event such a mandate is imposed the annual budgeted expense will be adjusted to meet the new compliance standard by mutual agreement.
- 5.5. City's supervisors shall provide ongoing local training support, duty roster, and overall direction in the absence of a Service Provider supplied supervisor which may be negotiated in a future Service Agreement.
- 5.6. City shall provide Service Provider with SIDA badges at no charge to the Service Provider, with the exception of lost badges which will be charged at the current rate.
- 5.7. City shall have the right to require Service Provider to replace an individual employee of the Service Providers whom the City deems unsatisfactory upon the request of the Airport Manager.
- 5.8. City shall provide for Service Provider's use of existing Airport owned equipment and facilities including an ARFF station, two ARFF apparatus, one operations vehicle, and other miscellaneous tools and supplies. Additionally,

the City shall furnish and maintain the following facilities, equipment, and supplies:

- 5.8.1. All vehicles
- 5.8.2. Fuel
- 5.8.3. Oil
- 5.8.4. Radios and communications equipment
- 5.8.5. ARFF supplies, equipment, tools, and repairs
- 5.8.6. Fire Station Building
- 5.8.7. All appliances and utilities (except non-essential telephones and telecommunication devices) required to meet FAA Airport Rescue and Fire Fighting Certification requirements.
- 5.8.8. Furniture, cleaning supplies, and bedding
- 5.9. City shall provide notice to Service Provider of any claim, action, or other proceeding which is brought against the City upon any matter in which the City, its Committees, Officers, Employees, or other Representatives shall be indemnified by the Service Provider in accord with the terms of this Service Agreement, the City shall within five (5) working days give notice of such action, law suit or other proceeding to the Service Provider and shall cooperate with the attorneys of the Service Provider in the defense of the action, law suit or other proceeding, which defense the Service Provider shall vigorously pursue.

6. OBLIGATIONS OF THE SERVICE PROVIDER

- 6.1. The Service Provider will provide sufficient personnel at the Airport who are trained so as to qualify the Airport for certification as detailed in “**Appendix C**”. The Service Provider’s understanding and commitment to these obligations is detailed in Service Providers proposal as shown in “**Appendix D**”.
- 6.2. The Service Provider will provide Operations and ARFF service twenty-four (24) hours a day, seven days (7) days a week, three hundred sixty-five (365) days per year with no exceptions. Service Provider staff shall provide said services on a 1-on-2-off basis with the remaining day covered by existing Airport staff.
- 6.3. Staffing shall initially consist of two (2) Operations Coordinators who will work varying shifts in conjunction with existing Airport Operations Coordinators. Each shift shall be staffed with a minimum of one (1) staff. Service Provider’s Operations Coordinators will report to an Airport Supervisor during the term of the Service Agreement unless otherwise modified. Staffing patterns and specifics may be modified by agreement between the Airport Manager and the Service Provider.
- 6.4. The primary service activity of the Service Provider shall be Operations and ARFF coverage.
- 6.5. Service Provider shall attempt to hire individuals with past Airport Operations experience to ensure base knowledge of Operations and ARFF. Positions shall be advertised on the AAEE web board.
- 6.6. The secondary service activities of the Service Provider are detailed in “**Appendix C**”.
- 6.7. Service Provider shall provide staff and training which meets the requirements as detailed in “**Appendix C**”. The Service Provider will assure that all personnel who will be on duty at the commencement of this Service

- Agreement will be trained to meet all applicable 14 CFR Part 139 requirements before being assigned to the Airport.
- 6.8. The Service Provider shall assure that daily vehicle maintenance is conducted by each shift coming on duty or after each use. This daily maintenance and inspection shall comply with Airport provider Standard Operating Procedures.
 - 6.9. The Service Provider upon completion of the daily vehicle maintenance inspection or the maintenance and inspection after each use, shall report any mechanical malfunctions or leaks immediately to the Maintenance Mechanic for proper disposition.
 - 6.10. The Service Provider shall maintain the station and all necessary areas for ARFF services on a daily basis in accordance with good housekeeping practices.
 - 6.11. Service Provider shall utilize City provided computer systems including ASOCS per Airport policy and procedure.
 - 6.12. Service Provider shall be responsible for providing Service Provider's staff with protective clothing, SCBA masks, fit testing, live fire training, physicals, and shall be responsible for any repairs or replacements of clothing damaged or neglected other than through normal wear.
 - 6.13. Service Provider shall be responsible for providing Service Providers staff with uniforms the meet the compliance standards of the Airport Manager.
 - 6.14. Service Provider shall provide the City with a current duty roster of all personnel and a daily shift report covering all activities.
 - 6.15. Service Provider will provide First Responder medical services as may be required by the FAA.
 - 6.16. While the Service Provider is an independent contractor and the employees are directly responsible to the Service Provider, the employees of the Service Provider will promptly comply with all reasonable instructions issued to them by the Airport Manager or designated representative to assure compliance with this Service Agreement and coordination of the services to be provider under this Service Agreement with the operations at the Airport.
 - 6.17. The Service Provider shall perform the obligations under this Service Agreement and shall observe and comply with any and all requirements of:
 - 6.17.1. Federal Statutes and Regulations or Policies;
 - 6.17.2. State Statutes or Regulations or Policies;
 - 6.17.3. Reasonable rules and regulations of the City whether adopted by Ordinance, Resolution, or otherwise which are deemed necessary for the safe operation of the Airport.
 - 6.18. This Service 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.

- 6.19. Service Provider shall include or cause to be included in each subcontract covering any of the services to be performed under this Service Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.
- 6.20. Service Provider agrees to repair any damage caused by Service Provider's employees. This includes but not limited to damage to City owned vehicles, equipment, buildings, etc. Such repairs will be to the satisfaction of the Airport Manager and shall restore the City's property to the same or better condition as existed prior to the damage.
- 6.21. Service Provider shall be responsible for any and all fines received from the FAA for improper ARFF responses related to Service Providers staff or failure to be compliant. Additionally, Service Provider shall be responsible for all TSA fines levied against it or the City from actions related to or caused by the actions of Service Providers employees.

7. TERMINATION BY SERVICE PROVIDER

- 7.1. Service Provider shall provide at least a minimum of one hundred twenty (120) days written notice prior to terminating services at any time, including at the end of this agreement, with the exception of the additional termination provisions provided within this section.
- 7.2. Provided the Service Provider has complied with all terms and conditions of this Service Agreement the Service Provider may terminate this Service Agreement in the event of the happening of any one (1) or more of the following contingencies:
 - 7.2.1. The permanent abandonment of the Airport as an Air Terminal for scheduled commercial air carriers.
 - 7.2.2. The issuance by any Court of competent jurisdiction of an injunction substantially preventing or restraining the use of the Airport or the Airport Terminal Building, with this injunction remaining in force for at least sixty (60) days.
 - 7.2.3. The breach by the City of any terms of this Service Agreement and the failure of the City to remedy this breach for a period of sixty (60) days after written notice from the Service Provider of the existence of this breach.
- 7.3. No Waiver of Default by the Service Provider of any of the terms of this Service Agreement which are to be performed by the City shall be construed to be or act as a Waiver of any subsequent default of any of the terms of this Agreement to be performed by the City.
- 7.4. The acceptance of payment by the Service Provider, for any period or periods, after a default of any of the terms of the Service Agreement to be performed by the City shall not be deemed a waiver of any right on the part of the Service Provider to cancel this Service Agreement for failure by the City to perform any of the terms of the Service Agreement.

8. TERMINATION BY THE CITY

- 8.1. In the event of budgetary shortfall's or operational need per the Standard Terms and Conditions contained within "**Appendix A**".

- 8.2. In the event of a material breach of services on behalf of the Service Provider in which a shift is not covered thereby impacting Airport operations the Service Provider will be subject to termination at the discretion of the City.
- 8.3. If the FAA discontinues ARFF service requirements, this Service Agreement may be cancelled by the City upon thirty (30) days written notice to the Service Provider with no further liability to the Service Provider on the part of the City.
- 8.4. If scheduled air services are interrupted for any reason, payments due under this Service Agreement shall terminate the day after the Service Provider lays off all its employees as instructed by the City, but these payments shall resume immediately on written notice from the City of resumption of scheduled air service.
- 8.5. If Service Provider fails to meet the terms of this Service Agreement so as to jeopardize the safety or the Certification of the Airport, the City may, at its option, immediately terminate the Service Agreement by providing the Service Provider with written notice of its failure to perform satisfactorily and of its termination.
- 8.6. The City may terminate this Service Agreement immediately upon any abandonment by the Service Provider of its conduct of ARFF service.
- 8.7. During the term of this Service Agreement City may require a change in the level of service provided at which time this Service Agreement shall automatically terminate upon implementation of a subsequent agreement with the Service Provider.
- 8.8. The City may terminate this Service Agreement by giving the Service Provider thirty (30) days advance written notice after the happening of any one of the following events:
 - 8.8.1. The filing by the Service Provider of a voluntary Petition in Bankruptcy.
 - 8.8.2. The institution of proceedings in bankruptcy against the Service Provider or the adjudication of the Service Provider has a bankrupt pursuant to these proceedings.
 - 8.8.3. The taking control by a court of jurisdiction of the assets of the Service Provider pursuant to proceedings brought under the provisions of the Federal Reorganization Act.
 - 8.8.4. The appointment of a receiver of the assets of the Service Provider.
 - 8.8.5. The divestiture of the estate of the Service Provider by any other operation of law.
 - 8.8.6. The failure of the Service Provider to abide by all applicable Federal Statutes, Regulations and policies, State Statutes, Rules and policies and appropriate ordinances and Resolutions of the City and its failure to remedy this default within the agreed upon time period after receipt of written notice from the City.
 - 8.8.7. The default by the Service Provider in the performance of any term of this Service Agreement to be performed by the Service Provider (other than those permitting termination immediately) and the failure to remedy this default after receipt of written notice from the City to remedy this default within the agreed upon time period.
 - 8.8.8. The lawful assumption by the United States Government, the State of Wisconsin, or any other authorized governmental entity of the operation, control or use of the Airport and its facilities or any substantial part or parts of it in such a manner as to substantially restrict the Service Provider for a period of at least thirty (3) days from providing ARFF services under this Service Agreement. In this event the Service

Provider shall have no right of recovery against the City, but shall make its case against the United States, the State of Wisconsin or the governmental entity as the case may be.

8.9. No Waiver of default by the City of any of the terms of this Service Agreement to be performed by the Service Provider shall be construed to be, or act as, a Waiver of any subsequent default of any of the terms of this Service Agreement to be performed by the Service Provider.

8.10. Acceptance by the City of any services to be provided by the Service Provider under this Service Agreement, for any period or periods, after a default of any of the terms to be performed by the Service Provider shall not be deemed a Waiver of any right by the City to cancel this Service Agreement for failure by the Service Provider to perform any of the terms of the Service Agreement.

9. The Airport Manager of the City is designated as the official representative of the City with full power to represent the City in dealings with the Service Provider in connection with performance of this Service Agreement.

10. STANDARD TERMS AND CONDITIONS: The Standard Terms and Conditions attached as “**Appendix A**” are made part of this Service Agreement. Where the Standard Terms and Condition conflict with the primary sections of this Service Agreement, the primary sections shall take precedence.

By: _____

By: City of La Crosse

Clinton Torp, Airport Manager

APPENDIX A

STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subconsultant costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

14. **INSURANCE.** Contracting Party 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 \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
- 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, 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 Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, 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 Contracting Party, 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 La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse 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.

Contracting Party shall reimburse La Crosse, 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. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

17. **INDEPENDENT CONSULTANTS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent consultants 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.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection therewith 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.

19. **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.

20. **NOTIFICATION.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, 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 Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **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.

22. ASSIGNMENT, SUBLET, AND TRANSFER. Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

23. 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.

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. CONFLICTS OF INTEREST. Contracting Party 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. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse.

26. NON-DISCRIMINATION. Pursuant to law, it is unlawful and Contracting Party 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.

Contracting Party 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.

27. POLITICAL ACTIVITIES. Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

28. GOVERNMENTAL APPROVALS. Contracting Party acknowledges that various of the specific undertakings of La Crosse 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. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse 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.

29. 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 La Crosse, granting approvals or conditions attendant with such approval, the specific action of La Crosse shall be deemed controlling. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. 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.

31. IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE. Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of La Crosse. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.

32. 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.

33. 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. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. INCORPORATION OF PROCEEDINGS AND EXHIBITS. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

35. ACCESS TO RECORDS. Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

36. PUBLIC RECORDS LAW. Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party 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. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. Additionally, Contracting Party agrees to indemnify and hold harmless La Crosse, 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 Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. 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.

38. 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.

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

40. FORCE MAJEURE. La Crosse shall not be responsible to Contracting Party 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.

41. GOOD STANDING. Contracting Party 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. Contracting Party 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.

42. 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.

43. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. 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.

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

APPENDIX B
HOURLY RATES

- Required overtime above that required to perform the duties of the Service Agreement shall be paid at 1.6 times the combined base rate plus variable employer costs not to exceed \$35.00 per hour.

**APPENDIX C
DETAIL OF DUTIES**

- **ARFF Services**
- **First Responder Services**
- **Open and lock the terminal daily**
- **Conduct daily perimeter security inspections**
- **Conduct a minimum of one daily and one nightly field inspection**
- **Conduct daily apparatus and equipment checks**
- **Conduct daily terminal checks**
- **Assist parking customers when needed due to equipment malfunctions**
- **Provide basic maintenance and troubleshooting expertise**
- **Act as liaison between Airport and tenants on a day-to-day basis**
- **Monitor daily aircraft movements including diversions, charters, etc. and provide necessary documentation and support in compliance with airport rules and regulations**
- **Conduct AED, fire extinguisher, sprinkler system, and other life safety device inspections**
- **Conduct FICONS and issue NOTAMS**
- **General housecleaning of station including mowing and snow removal**
- **Monitor airport security and access control systems**
- **Assist in the airport badging program**
- **Customer assistance as needed**
- **Other duties as assigned**

APPENDIX D
SERVICE PROVIDER UNDERSTANDING

Proposed Model Two (Two Operations Coordinators (ARFF))

Year 1 - \$185,000

Pro-Tec Will Provide:

- Salaries for two Operations Coordinators
- Employee benefits
- Workers compensation insurance
- All startup costs
- Uniforms
- Computer and computer connection for Pro-Tec network
- Training materials
- Live fire training
- Annual physicals
- SCBA Masks
- PPE
- Fit testing if needed

Airport Will Provide

- Living quarters and operations space
- Required vehicles per Part 139
- Telephone connections
- All required tools and equipment
- Chemicals for ARFF vehicles
- Radios