



## **CONCESSION AGREEMENT**

ADVERTISING CONCESSIONA AGREEMENT

at

La Crosse Regional Airport  
La Crosse, Wisconsin

between

City of La Crosse

and

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(Concessionaire)

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9. "Minimum Annual Privilege Fee." Refer to Subsection 6.1 a. (1).
10. "Non-secure Area" shall mean the Landside Area for which security protocols are not required.
11. "Percentage Privilege Fee." Refer to Subsection 6.1 a. (2).
12. "Personal Property" shall mean all movable property of the Company not directly related to the retail operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
13. "Privilege Fee." Refer to Subsection 6.1.
14. "Secure Area" shall mean the Airside Area for which Transportation Security Administration and Airport security protocols are in effect.
15. "Sterile Area" shall mean that area of the Secure Area in which prohibited items are forbidden or must be controlled per the Transportations Security Administration.
16. "Terminal Building" shall mean the terminal building at the Airport.
17. "Terminal Rehabilitation Project" shall mean a complete rehabilitation of the Terminal Building which will provide for the Concession space defined herein.
18. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Permitted Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.

### **SECTION 3 – PURPOSE AND DESCRIPTION OF PREMISES**

*Subsection 3.1 Purpose.* City will provide to Company certain space and equipment, (hereinafter collectively referred to as "Permitted Premises"), for Company to operate and maintain terminal advertising services, all located within the Airport Terminal of the Airport as designated on **Exhibit A**, which is attached hereto and incorporated herein by this reference. At the termination of this Agreement said space and equipment shall be returned to the same condition as existed prior to entering into this Agreement, ordinary wear and tear excepted.

*Subsection 3.2 Description of Premises.* As designated on **Exhibit A**, the Permitted Premises may contain the following physical space:

- a. Within the non-secure area of the Airport terminal building, the Permitted Premises shall consist of approximately two areas for free standing kiosk displays to be approved by the Airport Manager.

*Subsection 3.3 Description of Equipment.* City shall provide approximately the following equipment for exclusive or shared advertising use within the terminal.

- 1) Six (6) 47" dedicated advertising display monitors
- 2) Four (4) 55" dedicated video-wall advertising display monitors
- 3) Five (5) 55" television monitors with partial advertising display options
- 4) One (1) 47" television monitors with partial advertising display options

- 5) Eight (8) 47" FIDS displays with partial advertising display options
- 6) Two (2) 40" touch screen kiosk for hotels/car rentals/and misc. local vendor displays
- 7) One (1) networked control system for updating content in real-time utilizing a system of networked media players
- 8) Ten (10) passenger luggage carts.

#### **SECTION 4 - TERM**

*Subsection 4.1 Term.* The term of this Agreement is for a three (3) year, sixteen (16) day period commencing upon the effective date of this Agreement, unless sooner terminated as hereinafter provided, and terminating on September 1, 2018. The first year of the Term shall consist of one (1) year and sixteen (16) days for purposes of calculating annual rent payments. Subsequent years of the Term shall consist of one (1) year.

*Subsection 4.1 Extended Term.* Upon ninety (90) days mutual written agreement an Extended Term of a two (2) year period commencing upon completion of the Term.

#### **SECTION 5 – USES, PRIVILEGES, AND OBLIGATIONS**

*Subsection 5.1 Uses, Privileges, and Obligations.* Company shall have the following uses, privileges, and obligations in connection with its use of the Permitted Premises as and for terminal advertising services.

a) *Wall and other space.* Company shall be allocated and provided with wall, floor, and other space within the Premises and authorized from time to time during the term of this Agreement by the City Airport Manager, which space shall be used solely for the installation and maintenance by the Company of approved advertising displays, display cases, direct line reservation systems, and other advertising systems. The spaces initially allocated are shown on **Exhibit A** attached hereto and made a part hereof, it being understood, however, that these spaces or any other spaces approved and authorized hereafter are subject to immediate cancellation by the City if in the Airport Manager's opinion it is in the best interest of the City in its operation of the Terminal to do so.

b) *Electronic Equipment.* The City shall provide, and Company shall use, the digital displays outlined in Subsection 3.3 of this Agreement. City shall maintain the displays and provide the networking equipment necessary for their functioning. Company shall be responsible for all content management, date and time scheduling, and all management of operation of advertising on said displays. City reserves the right to utilize digital signage system without restriction for its own purposes which may include advertisements for airport programs and incentives.

g) *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. Company 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. Company 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. As requested by the City, Company shall provide annual DBE information.

4. Company shall utilize Airport Certified Disadvantaged Business (ACDBE) suppliers to the extent they are available in the State of Wisconsin. If certified ACDBE's are unavailable, Company shall work with City, in a good faith effort, to identify possible supplies which may be interested in becoming a certified ACDBE. Should a utilized certified ACDBE become unable to perform, Company shall attempt to replace said certified ACDBE in a timely manner. Company shall document all ACDBE participation in a manner acceptable to City, in accordance with the City's ACDBE program, including dollar value of supplies purchased (gross receipts) and type of business operation.

*Subsection 5.2 Conflicts with Other Concessions.* Notwithstanding the provisions of Section 3(a), Company specifically understands and agrees that, in the event of a conflict between Company and any other lessee or concessionaire in the Terminal Building as to specific services to be provided by respective concessionaires or lessees, Aviation Board shall have the final decision as to which product or service may be sold or provided by each concessionaire or lessee and Company agrees to be bound by such decision; provided, however, that the Aviation Board's decision shall be consistent with the intent of Section 3 and Section 5 herein.

## **SECTION 6 - PRIVILEGE FEES AND ACCOUNTING RECORDS**

### *Subsection 6.1 - Privilege Fee.*

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) *Minimum Annual Privilege Fee.*

- a. The Minimum Annual Privilege Fee for the first (1st) and subsequent contract years shall be the sum of Fifteen Thousand Dollars (\$15,000.00)
- b. Said Minimum Annual Privilege Fee shall be payable in twelve (12) equal monthly installments, due in advance and without demand by the twentieth (20<sup>th</sup>) day of each calendar month, throughout the term of this Agreement. For any period of less than one calendar month that this Agreement shall be in effect, said Minimum Privilege Fee shall be calculated on a pro rata basis.

(2) *Percentage Fees.*

- a. Percentage Fees to be applied to the Gross Receipts, as hereinafter defined, of Company and including each subcontractor separately, shall be as follows:  
\_\_\_\_\_ (\_\_\_\_\_%).
- b. Said Percentage Fees shall be payable without demand by the twentieth (20<sup>th</sup>) day of each calendar year, throughout the term of this Agreement. Company shall pay to City, without demand, a sum of money that represents the amount by which the Percentage Fees exceed the Minimum Privilege Fee for the previous year.

*Subsection 6.2 Definition of Gross Receipts.* As used herein, the term "Gross Receipts" shall include all charges billed by the Company to advertisers for advertising display services in the terminal. The following items may be excluded from Gross Receipts but shall be reported in both monthly and annual reports:

- a. Federal, state, county, and municipal sales taxes or other taxes separately stated and collected from customers;

Except as set forth above, if any charge for any of the services provided hereunder is not assessed, charged, or collected, irrespective of the reason therefore, other than in the event of stolen goods, the proper amount of such charge shall, nevertheless, be included in the term "Gross Receipts" as the same is used in this section. Further, no deduction shall be made from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

*Subsection 6.3 Payment of Percentage Fee and Annual Adjustment.* In the event that the Percentage Fee set forth in Subsection 6.1 a.(2) shall not exceed the Minimum Annual Privilege Fee set forth in Subsection 6.1 a.(1) in any contract year during the term hereof, then no Percentage Fee shall be due and payable. The statement of Gross Receipts set forth in Subsection 6.4(a) covering the final (12th) month of each contract year shall include a review of the prior year and a credit shall be taken for amounts paid. Within twenty (20) days of receipt of the statement required in Subsection 6.4 b., Company shall prepare and submit to City a statement showing the total Percentage Fee for the applicable period by category. If the sums paid by Company during said period exceed the Minimum Annual Privilege Fee or the Percentage Fee payments, whichever is greater, such overpayment shall be credited to the fees next thereafter due from Company. In the event Company is not a selected concessionaire after the expiration of this Agreement, a cash payment will be made to Company for any excess balance.

*Subsection 6.4 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 form as may reasonably be specified by City, certain information, including but not limited to, a statement of its Gross Receipts during the preceding month upon which the percentage fee payments to City set forth in Subsection 6.1 a.(2) are to be computed, with said statement to be signed by a responsible accounting officer of Company. Said statement shall include, at a minimum, a breakdown of Company's Gross Receipts and anything excluded from Gross Receipts. 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, and Company agrees to change the form of its statements to that requested by City and to provide any such additional information as City may reasonably request. Company shall keep full and accurate books and records showing all of its Gross Receipts, and City shall have the right, through its representatives and at reasonable times at the Airport or City facilities, 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 a senior financial officer of Company 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 6.5 Audit.* City reserves the right to audit Company's books and records pertaining to the Permitted Premises, at its own expense except as otherwise provided in this Agreement, at any time and made available at the Airport or City facilities for the purpose of verifying the Gross Receipts and Privilege Fee calculation 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 Permitted Premises by three percent (3%) 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 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 Permitted Premises to Company with said Permitted Premises meeting all federal, state and local code requirements for the operation of a restaurant, news and gift concession, and vending services. City shall provide and maintain the following: water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal Building. If Company requires additional lighting, electrical power, telephone service, communication system, or adjustments, 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.

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

*Subsection 8.1 Title.* All improvements made to the Permitted Premises by Company, and any additions and alterations thereto made by Company, shall immediately vest to the City immediately.

*Subsection 8.2 Structural Alterations.* Company shall make no structural alterations to the Permitted 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. 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 reasonable 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 Permitted 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 Permitted 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 for deliveries during peak activity periods by giving thirty (30) days notice of such restrictions.

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

- a. Company's General Obligations. Company shall be responsible for ensuring proper care in the operation of Airport equipment.

## **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 Permitted 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 City's policies as outlined in City's 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, or suppliers, shall be borne by Company to the extent said acts contributed to said fines. Company shall maintain a written training program for employees relative to security procedures.

## **SECTION 11 - QUALITY AND CHARACTER OF SERVICE**

*Subsection 12.2 Quality of Advertising.* Company shall offer for sale only high-quality advertising and those which are tasteful, free of adulteration, and appropriate for a public facility. Upon written notice to Company by the City of any violation of this provision, Company shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

*Subsection 12.1 Airport Manager's Right to Object.* The Airport Manager shall have the right to raise reasonable objections to the condition of the Permitted Premises, the quality and quantity of services utilized, advertising pricing, the character of the service, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said Manager to be remedied by Company.

## **SECTION 12 – NON-DISCRIMINATION**

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, and 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 13 - IDEMNIFICATION AND INSURANCE**

*Subsection 13.1 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 and in any manner 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 13.2 Company to Provide General Liability Insurance.* Company shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the minimum of the following insurance coverage or per the Airport Minimum Standards for insurance:

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

*Subsection 13.3 Insurance Certificate.* A certificate evidencing insurance required by Subsection 13.2, 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 Permitted 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 13.4 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 14 - DAMAGE OR DESTRUCTION OF PREMISES IN TERMINAL BUILDING**

*Subsection 14.1 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 tenantable, the same will be repaired with due diligence by City subject to the limitations of Subsection 14.4; 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 incurred in such repair to the extent that the damage is caused by the negligent or willful act or omission of Company, its sublessees, agents, or employees.

*Subsection 14.2 Extensive Damage.* If the damages referred to in Subsection 14.1 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 14.4; and, the charges payable herein for the Minimum Privilege Fee under Subsection 5.1 shall abate from the time of such damage or destruction until such time as the said Permitted Premises are fully restored and certified by City as ready for occupancy; provided, however, that 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 or willful act or omission of Company, its sublessees, agents, or employees.

*Subsection 14.3 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 Permitted Premises subject to governing body approval and appropriation; and charges payable herein for the Privilege Fee under Subsection 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 the City 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 or willful act or omission of Company, its sublessees, agents, or employees; provided further, however, if within six (6) months after the time of such damage or destruction said Permitted Premises shall not have been repaired or reconstructed, Company may cancel this Agreement in its entirety.

*Subsection 14.4 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 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 15 - TERMINATION**

*Subsection 15.1 Termination 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 15.2 Termination 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. City fails to commence the Terminal Rehabilitation Project which includes construction of the Permitted Premises. Company must not yet have occupied Permitted Premises.
- b. Company shall file a voluntary petition in bankruptcy; or
- c. Proceedings in bankruptcy shall be instituted against Company and Company is thereafter adjudicated bankrupt pursuant to such proceedings; or
- d. A court shall take jurisdiction of Company and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or

- e. A receiver of Company's assets shall be appointed; or
- f. 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
- g. Any assignment is made by Company for the benefit of its creditors; or
- h. The material breach by Company of any of the covenants or agreements herein contained and the failure of Company to remedy such breach for a period of thirty (30) days after receipt from City of written notice to remedy the same 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 thirty (30) days after the receipt of such notice by Company, City may, after the lapse of said thirty (30) 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.
- i. 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 15.3 Termination and Reletting.* Should an early termination of this Agreement occur pursuant to the terms of Subsection 15.2 hereof, City shall have the right to re-enter the Permitted Premises, make repairs as necessary, and enter into another agreement for the Permitted Premises and privileges, or any part thereof, for the remainder of the term hereof.

*Subsection 15.4 Notice of Termination.* If any of the events enumerated in Subsections 15.1 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 16 - PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION**

*Subsection 16.1 Rights Upon Termination or Cancellation.* Upon proper termination or cancellation of this Agreement for any reason except those outlined in Subsections 15.1 and 15.2, City shall have the right to require removal by Company of all Trade Fixtures, personal property, and expendables owned by Company, and as determined by the Airport Manager; 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. Should City terminate Agreement prior to Company occupying Permitted Premises per Subsection 15.2(a), Company shall be entitled to a refund of all funds paid to City per Section 6 of this Agreement.

*Subsection 16.2 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 15.1, 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 17 - 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 18 - SURRENDER OF POSSESSION**

Company shall, upon termination of this Agreement or cancellation, quit and deliver up the Permitted Premises and privileges to City peaceably and quietly, with the Permitted 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 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 Permitted 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 19 - LICENSES AND PERMITS**

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 20 - INSPECTION OF PREMISES**

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Permitted 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 21 - HOLDING OVER**

Should Company holdover said Permitted 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, one hundred and twenty (120%) percent of the amount of the minimum annual guarantee. All other terms and conditions in such holdover shall be the same as herein provided.

#### **SECTION 22 - 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 Permitted Premises during the term of this Agreement.

#### **SECTION 23 - 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 Permitted Premises and Company's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Company's acts or omissions.

#### **SECTION 24 - 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 Area 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 25 - 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 Regional 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 26 - 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 Permitted Premises, now or hereafter Permitted Premises 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 develop or improve the landing and public areas, including Terminal and ramp space, of the Airport as it sees fit, 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 Regional 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. In such event, Company shall have the right to terminate this Agreement upon thirty (30) days written notice.
- 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 Regional Airport, and the right to pursue all operations of the La Crosse Regional 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 thirty (30) days advance written 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 use of the Permitted Premises on the La Crosse Regional Airport. If said renegotiation is desired, written notice must be given to Company sixty (60) days prior to such renegotiations.

#### **SECTION 27 - ACCESS CONTROL**

- a. Company shall upon termination of this Agreement return all issued keys and access cards to City. If all issued keys and access cards 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 and access cards issued to employees of Company. If a key or access card 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 28 – 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 29 – 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 30 – 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 31 – NOTIFICATION**

Company shall:

- (1) 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.
- (2) 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.
- (3) 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 32 – 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 33 – 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 34 – 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 35 – 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 36 – POLITICAL ACTIVITIES**

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

### **SECTION 37 – 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 38 – 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 39 – 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 40 – 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 Regional 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 41 – 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 Contracting Party'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 42 – 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 43 – 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 44 – 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 45 – 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 46 – 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 47 - 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 48 - 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 49 – 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 50 – 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 51 – SURVIVAL**

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates set forth below.

ATTEST:

COMPANY:

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

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

ATTEST:

CITY OF LA CROSSE

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

Tim Kabat, Mayor

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

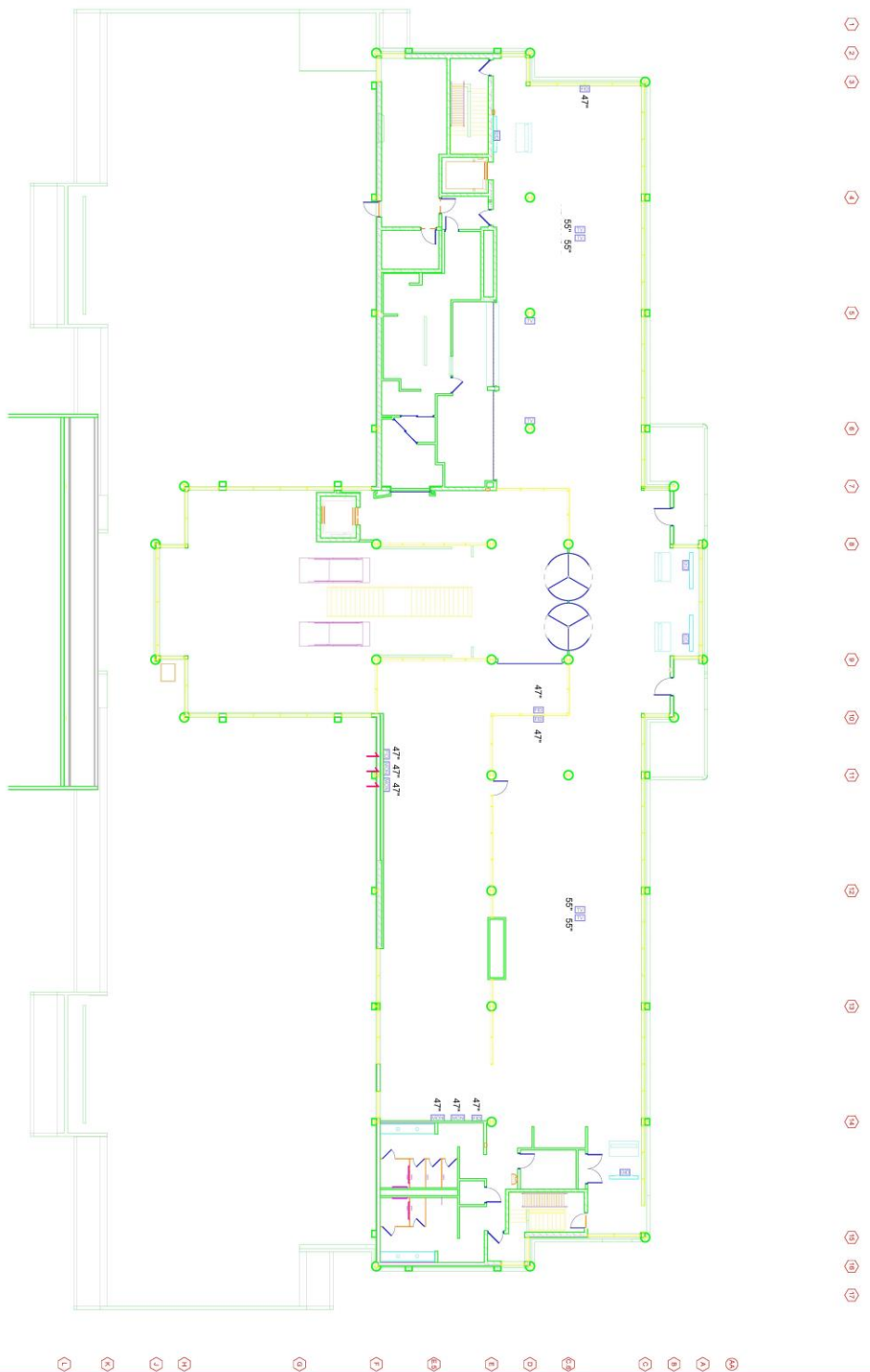
By: \_\_\_\_\_ By: \_\_\_\_\_

Teri Lehrke, City Clerk

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

# EXHIBIT A





**E-162**

DATE: 10/20/16  
 DRAWN BY: J. J. JENSEN  
 CHECKED BY: J. J. JENSEN  
 PROJECT: PASSENGER TERMINAL REHABILITATION  
 ELECTRICAL SYMBOLS  
 IN CONFORMANCE WITH  
 THE NATIONAL ELECTRICAL  
 CODE (NEC)

**La Crosse Regional Airport  
 Passenger Terminal Rehabilitation**  
 AIP No. 3-55-0030-37, Contract #1  
 2850 Airport Road  
 La Crosse, WI 54603

L&L Electric, Inc.  
 1400 Madison, WI 53602  
 Phone: 608.785.1111  
 Fax: 608.785.1112  
 www.llelectric.com