



## **CONCESSION AGREEMENT**

### **NON-EXCLUSIVE RENTAL CAR CONCESSION**

La Crosse Regional Airport  
La Crosse, Wisconsin

between

La Crosse Regional Airport  
City of La Crosse, Wisconsin

and

Avis Budget Car Rental, LLC  
Concessionaire

<u>Section</u>	<u>Page</u>
DEFINITIONS.....	5
SECTION 1 – LEASED PREMISES .....	7
SECTION 2 - TERM .....	8
SECTION 3 - USES, PRIVILEGES, COBRANDING AND OBLIGATIONS .....	8
SECTION 4 - RESTRICTIONS ON USES AND PRIVILEGES .....	9
SECTION 5 - PRIVILEGE FEE, RENTS, AND FEES .....	10
Subsection 5.1 Privilege Fee, Rent and Fees.....	10
SECTION 6 – ACCOUNTING RECORDS .....	13
Subsection 6.1 Statements, Books, and Records; Delinquent Rentals.....	13
Subsection 6.2 Audit.....	14
SECTION 7 - INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES.....	14
Subsection 7.1 Building Services .....	14
Subsection 7.2 Approval of Plans and Specifications; Provision of Drawings.....	15
SECTION 8 - TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.....	16
Subsection 8.1 Title.....	16
Subsection 8.2 Structural Alterations.....	16
Subsection 8.3 Alterations and Improvements to Airport.....	16
Subsection 8.4 Removal and Demolition.....	17
SECTION 9 - MAINTENANCE OF PREMISES AND UTILITIES PROVIDED .....	17
Subsection 9.1 Airport Maintenance Obligations.....	17
Subsection 9.2 Concessionaire's Maintenance Obligations.....	17
Subsection 9.3 Utilities.....	18
SECTION 10 - LIENS, PAYMENT, AND PERFORMANCE BONDS .....	18
Subsection 10.1 Construction Surety Bond.....	18
Subsection 10.2 Security .....	19
SECTION 11 - OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES .....	19
Subsection 11.1 Hours of Operation.....	19
Subsection 11.2 Delivery of Goods.....	19
SECTION 12 - QUALITY AND CHARACTER OF SERVICE .....	20
Subsection 12.1 Type of Operation.....	20
Subsection 12.2 Services to the General Public.....	20

Subsection 12.3 Additional Compliance. .... 20

Subsection 12.4 Personnel..... 20

SECTION 13 - SIGNS AND ADVERTISING..... 20

Subsection 13.1 Definition of Signs. .... 20

Subsection 13.2 Right to Install. .... 20

Subsection 13.3 Signs and Fixtures Outside Premises. .... 21

Subsection 13.4 Removal of Signs ..... 21

SECTION 14 – NON-DISCRIMINATION ..... 21

Subsection 14.1. General Civil Rights Provisions. .... 21

Subsection 14.2. Compliance with Nondiscrimination Requirements. .... 22

SECTION 15 - IDEMNIFICATION AND INSURANCE ..... 23

Subsection 15.1 Indemnification ..... 23

Subsection 15.2 Concessionaire to Provide General Liability and Automobile  
Insurance. .... 23

Subsection 15.3 Concessionaire to Provide Property and Fire Insurance. .... 24

Subsection 15.4 Both Concessionaire and City to Carry Property Insurance. .... 24

Subsection 15.5 Insurance Certificate. .... 24

Subsection 15.6 Concessionaire Failure to Provide Certificates..... 25

SECTION 16 - DAMAGE OR DESTRUCTION OF LEASED PREMISES ..... 25

Subsection 16.1 Partial Damage. .... 25

Subsection 16.2 Extensive Damage..... 25

Subsection 16.3 Complete Destruction..... 25

Subsection 16.4 Limits of City's Obligations Defined. .... 26

SECTION 17 - CANCELLATION ..... 26

Subsection 17.1 Cancellation by Concessionaire. .... 26

Subsection 17.2 Cancellation by City. .... 26

Subsection 17.3 Termination. .... 27

Subsection 17.4 Notice of Termination. .... 27

SECTION 18 - PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION ..... 27

Subsection 18.1 Rights Upon Termination or Cancellation..... 27

Subsection 18.2 Rights Upon Termination Because of Default by City..... 28

SECTION 19 - NONWAIVER OF RIGHTS ..... 28

SECTION 20 - SURRENDER OF POSSESSION..... 28

SECTION 21 - TAXES AND LICENSES..... 29

SECTION 22 - INSPECTION OF PREMISES ..... 29

SECTION 23 - HOLDING OVER ..... 29

SECTION 24 - QUIET ENJOYMENT..... 29

SECTION 25 - NO LIENS..... 29

SECTION 26 - OPERATIONS AND SECURITY AGREEMENTS..... 29

    Subsection 26.1 Compliance with Transportation Security Regulations under  
        49 CFR 1542..... 29

    Subsection 26.2 Compliance with Federal Aviation Regulations under 14 CFR  
        Part 139..... 30

SECTION 27 - AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE  
    UNITED STATES ..... 30

SECTION 28 - RIGHTS AND PRIVILEGES OF CITY ..... 30

SECTION 29 - ACCESS CONTROL ..... 31

SECTION 30 – NO PERSONAL LIABILITY..... 32

SECTION 31 – GOVERNING LAW ..... 32

SECTION 32 – JURY TRIAL WAIVER ..... 32

SECTION 33 – NOTIFICATION..... 32

SECTION 34 – SEVERABILITY ..... 33

SECTION 35 – ASSIGNMENT, SUBLET, AND TRANSFER..... 33

SECTION 36 – NO WAIVER ..... 33

SECTION 37 – CONFLICTS OF INTEREST ..... 33

SECTION 38 – POLITICAL ACTIVITIES ..... 33

SECTION 39 – ENTIRE AND SUPERSEDING AGREEMENT ..... 33

SECTION 40 – AMENDMENT ..... 34

SECTION 41 – TIME COMPUTATION ..... 34

SECTION 42 – NOTICES ..... 34

SECTION 43 – PUBLIC RECORD LAW ..... 35

SECTION 44 – CONSTRUCTION ..... 35

SECTION 45 – NO THIRD PARTY BENEFICIARY ..... 35

SECTION 46 – COMPLIANCE WITH LAW ..... 35

SECTION 47 – FORCE MAJEURE ..... 35

SECTION 48 – GOOD STANDING ..... 36

SECTION 49 - INDEPENDENT CONTRACTORS..... 36

SECTION 50 - GOVERNMENTAL APPROVALS ..... 36

SECTION 51 – AUTHORITY ..... 36

SECTION 52 – COUNTERPARTS ..... 36

SECTION 53 – SURVIVAL ..... 37

SECTION 54 – MORE FAVORABLE TERMS ..... 37

SECTION 55 – ENVIRONMENTAL ..... 37

    Subsection 55.1 Disposal, Use and Storage of Hazardous Materials. .... 37

    Subsection 55.2 Liability..... 37

    Subsection 55.3 Prevention of Release..... 38

    Subsection 55.4 Obligation to Investigate and Remediate..... 38

    Subsection 55.5 Records and Inspections..... 38

    Subsection 55.6 Concessionaire Obligations upon Termination..... 39

    Subsection 55.7 Storm Water..... 39

EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS ..... 41

EXHIBIT A2 - READY/RETURN BLOCKS..... 42

EXHIBIT A3 - AUTOMATED CAR WASH AND SERVICE BAYS ..... 43

EXHIBIT B – MONTHLY REPORT ..... 43

EXHIBIT C – SAMPLE RENTAL CAR ACDBE ANNUAL PARTICIPATION REPORT ..... 45

EXHIBIT D - TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND  
    AUTHORITIES ..... 47

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

THIS CONCESSION AGREEMENT ("**Agreement**") is made and entered into this 8th day of June 2023, by and between the City of La Crosse (the "**City**"), a municipal corporation and existing under the laws of the State of Wisconsin, whose address is 400 La Crosse St., La Crosse, Wisconsin 54601, hereinafter referred to as "City" and "Avis Budget Car Rental, LLC" operating as Avis and Budget, (hereinafter referred to as "**Concessionaire**"), a Delaware limited liability company with its office and address being 6 Sylvan Way, Parsippany, New Jersey, 07054, with a mailing address of 6 Sylvan Way, Parsippany, New Jersey, 07054.

WITNESSETH:

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

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

NOW, THEREFORE, THE PARTIES AGREE:

**DEFINITIONS**

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

1. "ACDBE" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
2. "Airport Director" shall mean the Airport Director of the City's Airport, or his or her designee, appointed under City of La Crosse Municipal Code to manage the Airport and represent City with relation to this agreement.
3. "City" shall mean the public body corporation existing under the laws of the State of Wisconsin, including its board and commissions, which controls, operates, and maintains the La Crosse Regional Airport.
4. "Environmental Law" shall mean any federal, state or local law, rule, regulation, order or requirement relating to protection of human health and safety or the environment.
5. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Concessionaire for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of any nature paid or payable to Concessionaire by customers for all sales made and

services performed for cash, credit, or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Concessionaire's operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Concessionaire's customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Concessionaire of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

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

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

6. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and includes any material or substance identified, listed, or defined as a "hazardous waste," "hazardous substance," "pollutant," "contaminant," or term of similar import, or is otherwise regulated pursuant to Environmental Laws including: asbestos, asbestos-containing materials, petroleum, petroleum produces, crude oil, natural gas, natural gas liquids, or any fraction of said products.

7. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises and which cannot be removed without material damage to the Premises.
8. "Operations Year" shall mean August 1 through July 31 annually.
9. "Personal Property" shall mean all movable property of the Concessionaire not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, office supplies, and information technology equipment.
10. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
11. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sports utility vehicles, and pick-up trucks rated three-quarter-ton or less.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.
14. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or, the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit, or any other consideration.
15. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car concessionaire rents or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car concessionaire collects revenue from the customer. Late returns (after twenty-four (24) hours) shall be considered a Transaction Day.

#### **SECTION 1 – LEASED PREMISES**

- A. City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Two Hundred Seventy-Six (276) square feet of counter/office/queuing area B in the terminal building, Block #2 the ready return area containing approximately 89 ready/return parking spaces outside and adjacent to the terminal building, and service bay D in the south long term public parking lot. Said Leased Premises is more particularly shown on **Exhibits A1, A2, and A3** attached hereto and by this reference made a part hereof.
- B. Concessionaire agrees that its Leased Premises have been inspected by Concessionaire and are accepted and will be occupied by Concessionaire on an "as is" basis. The Concessionaire specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness.



## **SECTION 2 - TERM**

The term of this Agreement is for a five (5) year period commencing on August 1, 2023, and terminating on July 31, 2028, unless sooner terminated or canceled as hereinafter provided.

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

Concessionaire shall have the following uses, privileges, and obligations in connection with its use of the Leased Premises:

- A. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van, or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than thirty-five (35)) to meet all reasonably foreseeable demands of the traveling public. Co-Branding by Concessionaire is limited to two brands per concession space as listed in its submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Concessionaire understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- B. The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupancy of operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that the rental car customers of Concessionaire will operate the vehicle rented only from the ready spaces provided herein, and Concessionaire shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than three-quarter ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Airport Director. Concessionaire shall not park, store, or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.
- C. The non-exclusive right and privilege to wash vehicles rented by Concessionaire under the provisions of this Agreement in the City's automated car wash.
- D. If a service bay is rented, the right and privilege to service vehicles rented by the Concessionaire under the provisions of this Agreement in the service bay identified in Section 1. Concessionaire shall use the service bay for the following activities only: vehicle hand washing, cleaning, fluid replacement, vacuuming, and related activities as are necessary for preparing its vehicles for rental.

- E. The right of ingress and egress to and from the Premises, which are subject to reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- F. Concessionaire shall install no signs on or about the Premises without the prior written approval of the City, said approval being solely discretionary with the Airport Director. All signs shall be subject to Section 13, *Signs and Advertising*.
- G. The right for Concessionaire's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City, subject to the payment of reasonable charges therefore, as set by the City. Employee parking shall only be allowed in those areas designated by the Airport. Concessionaire employees shall not park personal vehicles in the Leased Premises.
- H. *Airport Concession Disadvantaged Business Enterprise Program*
  - 1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
  - 2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
  - 3. Each year Concessionaire no later than February 1<sup>st</sup> shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past federal fiscal year (October through September), a description of the nature of the services performed by and/or items purchased from each firm named, and the amount spent with each firm named. The ACDBE must be certified by the Wisconsin Unified Certification Program. A sample reporting form is provided as Exhibit C. Concessionaire may use the sample report provided or a form of similar level of detail satisfactory to the City.
  - 4. Each year Concessionaire no later than February 1<sup>st</sup> shall provide to City data, as prescribed by the City, for the purpose to calculate and update ACDBE goals for this concession.

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

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

Prohibited Activities at the service bay include:

- A. Concessionaire shall not utilize the service bay for vehicle storage other than vehicles for rent in the process of being serviced.
- B. Concessionaire shall not utilize the service bay for any maintenance or for the storage of damaged vehicles.
- C. Concessionaire shall not allow its customers or the general public to enter the service bay.
- D. Concessionaire shall not permit its employees to vacuum or wash their personal vehicles at the service bay.
- E. Concessionaire shall not permit service bay doors to remain open when the service bay is not in use.

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

*Subsection 5.1 Privilege Fee, Rent and Fees.*

A. *Privilege Fee.* As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to City each Operations 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 Revenues, hereinafter defined, as follows:

- 1. Privilege Fee – the greater of either:
  - a. ten percent (10%) of the Concessionaire’s annual Gross Revenues (“Percentage Privilege Fee”);

OR

- b. the respective yearly amount shown below as the Concessionaire’s Minimum Annual Guaranteed fee (“MAG”):

August 1, 2023 to July 31, 2024	\$ 101,000.00
August 1, 2024 to July 31, 2025	\$ 101,000.00
August 1, 2025 to July 31, 2026	\$ 101,000.00
August 1, 2026 to July 31, 2027	\$ 101,000.00
August 1, 2027 to July 31, 2028	\$ 101,000.00

- 2. Monthly payment shall be the greater of 1/12<sup>th</sup> of the respective year’s MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1<sup>st</sup>) day of each month during each Operations Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG identified in Section 5.1(A)(1)(b) above. On or before the 20<sup>th</sup> of each month the Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee

shown to be due for the preceding month, as designated on Exhibit B, attached hereto and made a part hereof. Once the sum of Privilege Fee payments remitted has reached the MAG in any given Operations Year, the Concessionaire may cease remittance of the 1/12<sup>th</sup> of the respective year's MAG on the first (1<sup>st</sup>) day of each month for the remainder of that Operations Year. For each and every month after the annual MAG has been reached the Concessionaire shall continue to report the full 10% of reported gross revenues for the previous month.

B. Rent - All Rents set forth in this Section 5, Paragraph B, Subsection 1, are subject to Wisconsin sales tax and other applicable taxes which shall be collected by the City in addition to the rent listed in a, and b below:

1. Rent for Premises

Concessionaire shall pay to the City, in advance, on the 1<sup>st</sup> day of each month the following rent:

a) For the period commencing August 1, 2023 through December 31, 2023, Concessionaire shall pay the sum of Fifty Five Dollars and Twelve Cents (\$55.12) per square foot per annum for Two Hundred Seventy-Six (276) square feet of counter/office/queuing position in the Terminal Building. Thereafter, commencing January 1, 2024, January 1, 2025, January 1, 2026, January 1, 2027 and January 1, 2028 the per square foot per annum rent shall be at the cost recovery rental rate per square foot calculated for the Terminal Building on an annual basis.

b) For the period commencing August 1, 2023 through December 31, 2023, Concessionaire shall pay the sum of Ninety-Six Thousand One Hundred Twenty Dollars (\$96,120), per annum for Ready Return Block #2 as shown on Exhibit A2. On January 1 of each year for the period of this Lease, commencing January 1, 2024, the rental amounts for the parking block, shall be adjusted in accordance with the Consumer Price Index – National Index for All Urban Consumers for the previous calendar year. Said adjustment shall be computed as follows:

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

c) For the period commencing August 1, 2023 through December 31, 2023, Concessionaire shall pay the sum of Twenty Four Thousand Dollars (\$24,000), per annum for any service bay rented as described in Section 1(A). On January 1 of each year for the period of this Lease, commencing January 1, 2024, the rental amounts for the service bay, shall be adjusted in accordance with the Consumer

Price Index – National Index for All Urban Consumers for the previous calendar year, as described above.

C. Additional Fees – All Fees set forth in this Section 5, Paragraph B, are subject to Wisconsin sales tax and other applicable taxes which shall be collected by the City in addition to the rent listed in a, and b below:

1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
2. In the event Concessionaire chooses to use the City's automated car wash, the Concessionaire shall pay to the City a per wash fee as set in the adopted Airport Schedule of Fees. Payment shall be due within thirty (30) days of invoice date.
3. In the event Concessionaire chooses to use the fuel system, the Concessionaire shall pay to the City an annual fuel system access fee to utilize the fuel facilities. Additionally, the Concessionaire will pay to the City based on actual gallons pumped a per gallon fuel rate set in the adopted Airport Schedule of Fees. Payment shall be due within thirty (30) days of invoice date.
4. In the event Concessionaire chooses to utilize overflow parking, the Concessionaire shall pay to the City a daily rate per vehicle determined by the City for overflow parking of its rental cars for use by Airport customers in the public parking lot. Payment shall be due within thirty (30) days of invoice date.

D. Any and all payments due to the City by Concessionaire shall be remitted to the following address:

La Crosse Regional Airport  
Attn: Airport Director  
2850 Airport Road  
La Crosse, WI 54603

E. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Concessionaire within thirty (30)

days after the Airport's acceptance of the final Certified Statement described in this Section. Concessionaire shall submit separate system generated reports for each brand name operated.

F. Concessionaire's Right of Abatement. In the event that the following condition exists during the term of this Agreement, the minimum annual guarantee hereinabove provided for in Section 5.1(A)(1)(b) shall be abated for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a not less than twenty-five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.
2. The abatement amount for those months that are abated as defined in Section 5(F)(1) will be the prorated reduction of that month's 1/12th payment of the minimum annual guarantee. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th minimum annual guarantee payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.
3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the twenty-five percent (25%) threshold, at which time the full minimum annual guarantee payment shall be made for such month.
4. This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than twenty-five percent (25%) reduction in passenger deplanements. Overpayments of the MAG will be credited to the Concessionaire during the year-end reconciliation process described in Section 5(E).

## **SECTION 6 – ACCOUNTING RECORDS**

### *Subsection 6.1 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, Concessionaire shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to City set forth in Subsection 5.1(A)(1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City reserves the right to change the form of the monthly statement and to require the submission by

Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy, and audit such books and records, including State of Wisconsin sales tax return records. Concessionaire 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, Concessionaire shall provide to City a written statement, certified by an independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Concessionaire 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 Concessionaire, to be received by City within ninety (90) days of the end of each Operations Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and records of Concessionaire 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, Concessionaire 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 6.2 Audit.* City reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues and Privilege Fee calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire 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

Leased Premises to Concessionaire with said Leased Premises meeting all federal, state and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, heating, and air-conditioning for the Terminal Building. Heating and air conditioning and electrical service are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, telephone outlets, or adjustments to the air-conditioning system, such additional improvements or services shall be subject to the prior written approval of Airport Director, and any such approved improvements or services shall be made at Concessionaire's expense.

- B. Concessionaire's Right to Additional Services. Concessionaire shall have the right, at its own expense, to request and receive telephone services or communication systems, provided that any such services or systems shall require the written approval of Airport Director before installation.

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

- A. General. Any improvements to be made to or upon the Leased Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Airport Director. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Airport Director before any work or construction is commenced, which shall not be unreasonably withheld or delayed. Generally accepted standards of design and construction shall be complied with in connection with all such work, facilities, and improvements. Such construction and alteration shall conform to the general architectural and engineering requirements of the City, which may require the use of a Wisconsin certified engineer or architect. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to City for review prior to commencement of construction; after final approval by City, City shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- B. Improvements Conform to Statutes, Ordinances, Etc. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Concessionaire to resubmit any such



layout or design proposals until they meet City approval.

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

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

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

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

*Subsection 8.3 Alterations and Improvements to Airport.* Concessionaire 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 Concessionaire's operations hereunder. Concessionaire agrees to accommodate City in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire 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 Concessionaire 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 City after consultation with Concessionaire. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Airport Director and said move is at Concessionaire's sole cost and expense. If the City elects to relocate Concessionaire during the term of this Agreement, the City will reimburse reasonable and necessary costs associated with the relocation as determined by the City in advance of the relocation.

*Subsection 8.4 Removal and Demolition.* Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of City which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

## **SECTION 9 - MAINTENANCE OF PREMISES AND UTILITIES PROVIDED**

### *Subsection 9.1 Airport Maintenance Obligations.*

- A. General Maintenance and Operation. City agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith.
- B. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building and shall provide, or cause to be provided, the washing of all windows (on the outside of the Terminal Building only) in the Leased Premises at periodic intervals.
- C. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.
- D. City's Automated Car Wash. City will maintain and inspect the City's automated car wash as recommended by the manufacturer including routine maintenance of the car wash for normal activities, wear and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, roadways, parking lots, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes and utilities will be provided by the City. City will provide routine cleaning of the City's automated car wash. City has the exclusive authority to stop the use of the car wash for maintenance, inspections, and weather as is necessary without damage or liability to Concessionaire and at the City's sole discretion. City will take reasonable action to notify Concessionaire for closure of the car wash.

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

- A. Concessionaire's General Obligations. Except for maintenance of the Terminal Building and the City's Automated Car Wash, as provided in Subsection 9.1, Concessionaire shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or

furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of City. Concessionaire shall be obligated, without cost to City, to provide custodial service to Leased Premises.

- B. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to City of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected expeditiously upon receipt of notice, oral or written, to the Airport Director. At the direction of the Airport Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- C. Trash and Refuse. City shall provide, at no cost to Concessionaire, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor.
- D. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall ensure that trash is not strewn around while taking refuse to the refuse site. Such disposal shall take place during hours as may be approved by the City.

*Subsection 9.3 Utilities.*

- A. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. City shall have the right to set, monitor, adjust and restrict thermostat settings to levels it determines to be appropriate.
- B. City shall provide electricity to the Leased Premises by means of wiring installations, and Concessionaire shall make such connections as required and permitted by building code. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring installation in place.

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

*Subsection 10.1 Construction Surety Bond.* Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire 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 Concessionaire'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 Security.* During the term of this Agreement, the City shall require the Concessionaire to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of Concessionaire's Minimum Annual Guarantee for each year hereunder, in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

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

*Subsection 11.1 Hours of Operation.* Concessionaire shall actively operate in the Leased Premises and shall use a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week. In the event no flights are scheduled to arrive on a given calendar day, the staffing requirements may be waived by requesting such in advance with the City. Concessionaire's facilities will be adequately staffed and open at least thirty (30) minutes prior to the earliest scheduled air carrier arrival and at least thirty (30) minutes after the last scheduled arrival. Hours of operation shall be such that passengers of flights arriving or departing from the terminal will be accommodated. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the City of Concessionaire's analysis of the optimum arrangements, but the final determination shall be made by the City based on an analysis of necessary service to the public. Upon notice to Concessionaire by the City of unscheduled commercial passenger aircraft diverted into the Airport, Concessionaire shall, to the extent possible, accommodate the rental car needs of passengers who may deplane from such diverted aircraft.

*Subsection 11.2 Delivery of Goods.* Concessionaire shall arrange for the timely delivery of all Motor Vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City.

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

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

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

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

### *Subsection 12.4 Personnel.*

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

## **SECTION 13 - SIGNS AND ADVERTISING**

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

*Subsection 13.2 Right to Install.* Concessionaire shall have the right to install and operate upon or in the Leased Premises at Concessionaire's sole cost and expense, signs containing its name and

representing its business. Concessionaire acknowledges City's desire to maintain a high level of aesthetic quality in the Terminal Building and in all concession facilities throughout the Terminal Building. Therefore, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, Concessionaire will submit to City the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Premises in accordance with the Terminal Signage and Appearance Standards Guidelines and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of the City as to the size, design, content, and location. Handwritten, or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the City at any time during the term of this Agreement, Concessionaire shall install, remove, or modify any signs which the Airport Director deems necessary or unnecessary for identification or information to the public, passengers, or other Airport users. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not limit City's authority to require removal of any unapproved sign. No signage will be permitted on or in the service bay which is viewable to the public.

*Subsection 13.3 Signs and Fixtures Outside Premises.* Concessionaire shall not place or install any racks, stands, stanchions, notices, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Airport Director.

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

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

### *Subsection 14.1. General Civil Rights Provisions.*

The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

The provision obligates the Concessionaire for the period during which the property is owned, used, or possessed by the Concessionaire and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

*Subsection 14.2. Compliance with Nondiscrimination Requirements.*

During the performance of this Agreement, the Concessionaire, for itself, its assignees and successors in interest agrees as follows:

- a. **Compliance with Regulations:** Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit D and which are herein incorporated by reference and made a part of this Agreement.
- b. **Nondiscrimination:** Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
- d. **Information and Reports:** Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
- f. **Incorporation of Provisions:** The Concessionaire will include the provisions of paragraphs a. through f. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the

sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

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

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

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

### *Subsection 15.2 Concessionaire to Provide General Liability and Automobile Insurance.*

Concessionaire shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage;
- B. Automobile Insurance of not less than \$5,000,000 per occurrence;



- C. To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation with Wisconsin statutory limits and Employers' Liability Insurance with limits not less than \$100,000 bodily injury by accident, \$100,000 bodily injury by disease with a policy limit by disease of \$500,000.

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

*Subsection 15.4 Both Concessionaire and City to Carry Property Insurance.* It is understood that both Concessionaire and City carry insurance in the form of Causes of Loss – Special Form (direct physical loss unless the loss is excluded or limited in the policy), Insurance Services Office form CP 10 30 09 17 or its equivalent (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Concessionaire), and said Insurance Coverage authorizes a waiver of subrogation between City and Concessionaire, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Concessionaire collects under its Insurance Coverage, Concessionaire waives any and all claims against City, its agents, servants, and employees, for loss or damage to Concessionaire's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

*Subsection 15.5 Insurance Certificate.* A certificate evidencing insurance required by Subsection 15.2 and 15.3, and listing the City of La Crosse as additional insured, shall be filed with City prior to the commencement of construction, furnishing, and equipping of Leasehold Improvements by Concessionaire upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least ten (10) days prior

to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

## **SECTION 16 - DAMAGE OR DESTRUCTION OF LEASED PREMISES**

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

*Subsection 16.2 Extensive Damage.* If the damages referred to in Subsection 16.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 16.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

*Subsection 16.3 Complete Destruction.* In the event the Terminal Building premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction

until such time as the said Leased Premises are fully restored and certified by City as ready for occupancy. However, said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees. If, within ninety days (90) after the time of such damage or destruction, the City has not determined if said Leased Premises shall be repaired or reconstructed, Concessionaire may cancel this Agreement in its entirety.

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

## **SECTION 17 - CANCELLATION**

*Subsection 17.1 Cancellation by Concessionaire.* Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire or City, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Concessionaire.
- 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 Concessionaire of written notice to remedy the same.

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

- A. Concessionaire shall file a voluntary petition in bankruptcy; or
- B. Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is

- thereafter adjudicated bankrupt pursuant to such proceedings; or
- C. A court shall take jurisdiction of Concessionaire and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or
  - D. A receiver of Concessionaire's assets shall be appointed; or
  - E. Concessionaire 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 Concessionaire is involved; or
  - F. Any assignment is made by Concessionaire for the benefit of its creditors; or
  - G. The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Concessionaire, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
  - H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire, for a period of at least thirty (30) days, from its Airport operation.

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

*Subsection 17.4 Notice of Termination.* If any of the events enumerated in Subsections 17.1 and 17.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

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

*Subsection 18.1 Rights Upon Termination or Cancellation.* Upon proper termination or cancellation of this Agreement for any reason except those outlined in Subsections 17.1 and 17.2, City shall have the right to require removal by Concessionaire of all Trade Fixtures, personal property, and expendables owned by Concessionaire; and Concessionaire shall immediately remove such Trade

Fixtures, personal property, and expendables. Concessionaire shall reimburse City for the cost of any repairs required as a result of Concessionaire's removal of said Trade Fixtures, personal property, and expendables. At the request of Concessionaire, City may, at its discretion, take title to any or all such Trade Fixtures, personal property, or expendables, at no cost to City. Should Concessionaire fail to remove Trade Fixtures, personal property, or expendables, City shall do so and all labor and materials required to remove Concessionaire's Trade Fixtures, personal property, and expendables shall be paid by Concessionaire.

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

- A. Leasehold or Fixed Improvements. With respect to Leasehold Improvements paid for by Concessionaire 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 Concessionaire of said damages, all such Leasehold Improvements shall become the sole property of City. Concessionaire 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, Concessionaire shall remove all personal property and Trade Fixtures, and shall reimburse City for the cost of any repairs required as a result of Concessionaire's removal of such property and fixtures.

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

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

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

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

the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees.

**SECTION 21 - TAXES AND LICENSES**

Concessionaire 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.

**SECTION 22 - INSPECTION OF PREMISES**

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

**SECTION 23 - HOLDING OVER**

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

**SECTION 24 - QUIET ENJOYMENT**

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

**SECTION 25 - NO LIENS**

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

**SECTION 26 - OPERATIONS AND SECURITY AGREEMENTS**

*Subsection 26.1 Compliance with Transportation Security Regulations under 49 CFR 1542.*

Concessionaire agrees to comply with, and enforce, all regulations duly issued by the Transportation Security Administration through the Airport's Airport Security Program, Security Directives, or other means that now or in the future may exist. In addition, concessionaire agrees to abide by all local rules, regulations, and laws as issued and approved by the City in accordance with the La Crosse Municipal

Code and the laws of the State of Wisconsin. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

*Subsection 26.2 Compliance with Federal Aviation Regulations under 14 CFR Part 139.*

Concessionaire agrees to comply with Federal Aviation Regulations and the Airport's policies as outlined in the Airport's Federal Aviation Administration approved Airport Certification Manual, Advisory Circulars, or other legal means as may exist now or in the future. In addition, concessionaire agrees to abide by all local rules, regulations, and laws as issued and approved by the City in accordance with the La Crosse Municipal Code and the laws of the State of Wisconsin. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

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

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

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

- A. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire 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 Director is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City in dealings with Concessionaire in connection with the rights herein granted, except where City grants a specific right or responsibility to another through the La Crosse Municipal Code.
- C. The City may enter upon the Leased Premises, now or hereafter leased to Concessionaire 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.

- D. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns; as the City deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- E. 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 the 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.
- F. 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 the Airport, and the right to pursue all operations of the Airport.
- G. 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 Concessionaire 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.
- H. City may from time to time increase the size or capacity of any such public Aircraft Facilities or Terminal Building or common use portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- I. This Agreement may be reopened at any time for renegotiation if Federal Aviation Administration Airport Certification requirements under 14 CFR Part 139 or Transportation Security Administration Requirements under 49 CFR 1542 result in major expenditures to City due to Concessionaire's tenancy on the Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- J. City reserves the right to relocate the Leased Premises upon the completion of any Terminal Building remodel or expansion. City will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment.

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

- A. Concessionaire shall upon termination of this agreement return all issued keys to City. If all issued keys are not returned to City at the termination of this Agreement, Concessionaire 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. Concessionaire is responsible for all keys issued to employees of Concessionaire. If a key is lost, Concessionaire 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. Concessionaire is ultimately responsible for all access media issued to Concessionaire employees including all fees levied for failure to return said access media.

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

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

### **SECTION 31 – GOVERNING LAW**

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

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

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

### **SECTION 33 – NOTIFICATION**

Concessionaire shall:

- A. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Concessionaire with respect thereto.
- B. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Concessionaire contained in this Agreement to be untrue.
- C. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Concessionaire or any guarantor or an investigation, clean-

up, removal, remedial action or other response by or on the part of Concessionaire or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Concessionaire or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

**SECTION 34 – SEVERABILITY**

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

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

Concessionaire 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. Concessionaire shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

**SECTION 36 – NO WAIVER**

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

**SECTION 37 – CONFLICTS OF INTEREST**

Concessionaire 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. Concessionaire further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Concessionaire or its employee must be disclosed to City.

**SECTION 38 – POLITICAL ACTIVITIES**

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

**SECTION 39 – ENTIRE AND SUPERSEDING AGREEMENT**

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute

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

**SECTION 40 – AMENDMENT**

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

**SECTION 41 – TIME COMPUTATION**

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

**SECTION 42 – NOTICES**

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 Attn: Airport Director 2850 Airport Rd La Crosse, WI 54603	Copy to: Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
----------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

To the Concessionaire: Avis Budget Car Rental, LLC  
6 Sylvan Way  
Parsippany, New Jersey, 07054

#### **SECTION 43 – PUBLIC RECORD LAW**

Concessionaire understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Concessionaire agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to each Operations Year of this Agreement as set forth in Subsection 6.1(A), for a period of not less than seven (7) years after the end of each Operations Year, including seven (7) years following the termination or expiration of this Agreement. Concessionaire agrees to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, Concessionaire 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 Concessionaire's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Concessionaire decides not to retain its records for a period of seven (7) years after the end of each Operations Year, then it shall provide written notice to City whereupon La Crosse shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

#### **SECTION 44 – CONSTRUCTION**

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

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

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

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

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

#### **SECTION 47 – FORCE MAJEURE**

City shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes,

fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

#### **SECTION 48 – GOOD STANDING**

Concessionaire 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. Concessionaire is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

#### **SECTION 49 - INDEPENDENT CONTRACTORS**

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

#### **SECTION 50 - GOVERNMENTAL APPROVALS**

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

#### **SECTION 51 – AUTHORITY**

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

#### **SECTION 52 – COUNTERPARTS**

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

**SECTION 53 – SURVIVAL**

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

**SECTION 54 – MORE FAVORABLE TERMS**

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

**SECTION 55 – ENVIRONMENTAL**

*Subsection 55.1 Disposal, Use and Storage of Hazardous Materials.*

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

- A. Concessionaire may store and use Hazardous Materials on the Leased Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Concessionaire shall provide City with a copy of any application for a permit for use or storage of Hazardous Materials on the Leased Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and
- B. Concessionaire may use Hazardous Materials on the Airport other than the Leased Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement.

*Subsection 55.2 Liability.*

Concessionaire shall be solely and fully responsible and liable for:

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

*Subsection 55.3 Prevention of Release.*

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

*Subsection 55.4 Obligation to Investigate and Remediate.*

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

- A. Any release or threat of release of Hazardous Material on the Leased Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; except that Concessionaire shall have no responsibility for any release or threat of release of Hazardous Material which Concessionaire establishes was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors, or permittees by any third party, or by migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue to remediate, to the extent required, any such release, or threat of release, of Hazardous Materials for which it has responsibility under this section, City, in its discretion, may pay to have same remediated and Concessionaire shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or threat of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that expense was incurred by City.

*Subsection 55.5 Records and Inspections.*

- A. Concessionaire will maintain a chemical inventory list of hazardous materials stored on site in accordance with state and federal regulations. The Concessionaire will also maintain manifests for all hazardous or regulated wastes transported and disposed of off-site.
- B. Upon reasonable notice by City, Concessionaire shall make available for review by City such records pertaining to the use, handling, and disposal of any Hazardous Material(s) as Concessionaire is required to maintain under this section.
- C. City shall have the right, under the terms hereof, and upon reasonable notice for exclusive use space, to enter the Leased Premises during the Term hereof to conduct periodic

environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Concessionaire's operations.

*Subsection 55.6 Concessionaire Obligations upon Termination.*

Prior to vacating the Leased Premises, and in addition to all other requirements under this Agreement, Concessionaire shall remove any containers of Hazardous Materials placed on the Leased Premises during the Term by Concessionaire or as a result of Concessionaire's use or occupancy of the Leased Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City.

*Subsection 55.7 Storm Water.*

- A. Notwithstanding any other provisions or terms of this Agreement, Concessionaire acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Concessionaire agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and Concessionaire's uses thereof.
- B. Concessionaire acknowledges that any storm water discharge permit issued to City may name Concessionaire as a co-permittee. City and Concessionaire both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Concessionaire acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled or otherwise used by Concessionaire, as such term may be defined by applicable storm water rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.
- C. City will provide Concessionaire with written notice of any storm water discharge permit requirements applicable to Concessionaire and with which Concessionaire will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Concessionaire agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Concessionaire does not provide such timely notice, Concessionaire will be deemed to assent to undertake such storm water permit requirements. In that event, Concessionaire agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Concessionaire, those storm water permit requirements for which it has received written



notice from City, and Concessionaire agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

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

ATTEST:

By:

  
\_\_\_\_\_  
Donna A. Shabinaw, Paralegal  
Properties & Facilities

LESSEE: AVIS BUDGET CAR RENTAL, LLC

By:

  
\_\_\_\_\_  
Print Name: Paul Gallagher

Title: Assistant Secretary

Date:

4/28/2023  
\_\_\_\_\_

ATTEST:

By:

\_\_\_\_\_  
Ian Turner, Airport Director

LESSOR: CITY OF LA CROSSE

By:

\_\_\_\_\_  
Mayor Mitch Reynolds

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

By:

\_\_\_\_\_  
City Clerk Nikki Elsen

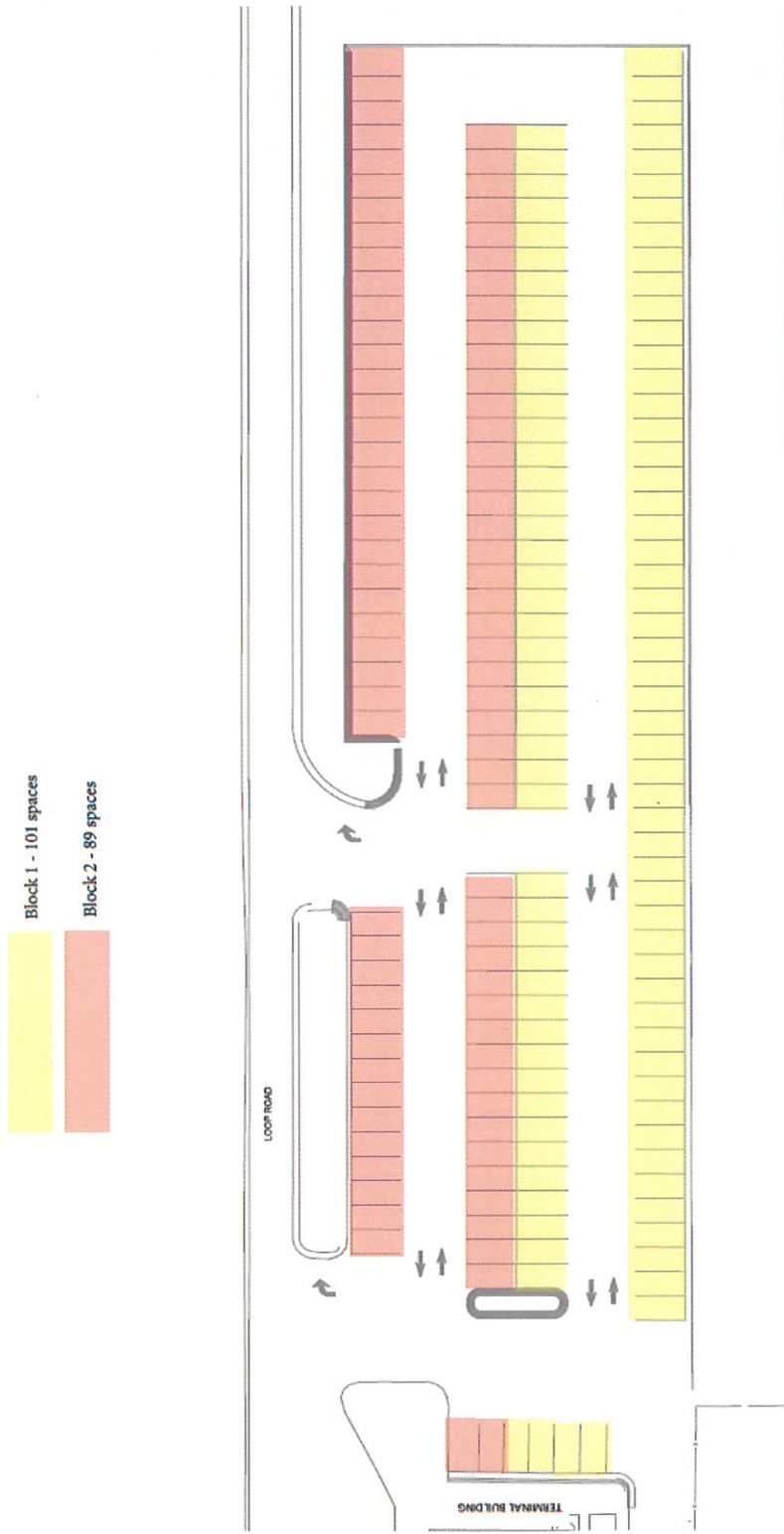
Date: \_\_\_\_\_

**EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS**



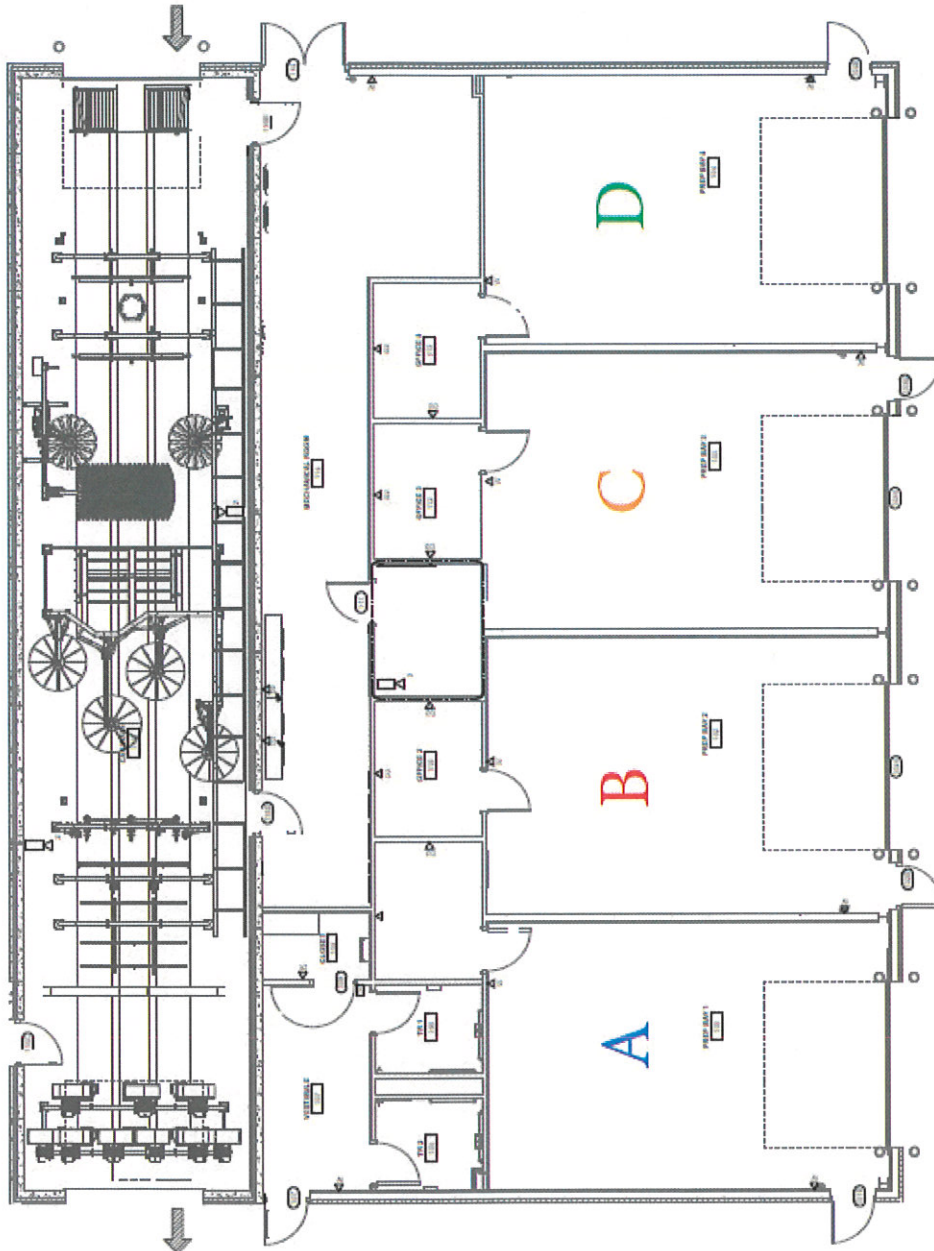
Avis Budget Car Rental LLC – B

**EXHIBIT A2 - READY/RETURN BLOCKS**



**Avis Budget Car Rental LLC – Block 2**

EXHIBIT A3 - AUTOMATED CAR WASH AND SERVICE BAYS



Avis Budget Car Rental LLC – Bay D

**EXHIBIT B – MONTHLY REPORT**

**LA CROSSE REGIONAL AIRPORT  
RENTAL CAR MONTHLY REPORT OF GROSS REVENUES**

FOR THE MONTH OF \_\_\_\_\_

CONCESSIONAIRE \_\_\_\_\_

**Gross Revenue:**

Time and Mileage	\$ _____
Fuel	\$ _____
Insurance	\$ _____
Ancillary Charges	\$ _____
Airport Recoup Fee	\$ _____
Licensee Recoup Fee	\$ _____
Gov't Admin Rental Fee	\$ _____
Miscellaneous	\$ _____

Subtotal \$ \_\_\_\_\_

Privilege Fee Due - 10% \$ \_\_\_\_\_

Less: Monthly Guarantee paid 1st of month: \$ \_\_\_\_\_

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

Total Number of Rental Contracts \_\_\_\_\_

Total Number of Rental Days \_\_\_\_\_

CFC Due (@\$4.00 per Rental Day) (2) \$ \_\_\_\_\_

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

**Concessionaire Official Signing and Certifying accuracy of information on this report:**

Signature \_\_\_\_\_

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

Date Signed \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

**REMIT THIS FORM AND PAYMENT TO:**

**LA CROSSE REGIONAL AIRPORT  
2850 AIRPORT ROAD  
LA CROSSE, WI 54603**

**EXHIBIT C – SAMPLE RENTAL CAR ACDBE ANNUAL PARTICIPATION REPORT**

**Date:** \_\_\_\_\_ **Reporting Period:** FFY ending September 30, 20\_\_\_\_

**Concessionaire:**

**Concessionaire Contact:**

**Concessionaire Gross Revenue for FFY (October 1 – September 30) \$** \_\_\_\_\_

**Concessionaire reports** \_\_\_\_\_ **% ACDBE participation through the following means:**

**The Concessionaire is a certified ACDBE?**      **Yes**      **No**

**The Concessionaire subleased a portion of the agreement to an ACDBE?**      **Yes**      **No**

**If yes, ACDBE generated** \_\_\_\_\_ **% of the annual gross revenue reported.**

**ACDBE Name:**

**ACDBE Contact:**

**ACDBE Phone:**

**The Concessionaire is a joint-venture with an ACDBE partner?**      **Yes**      **No**

**If yes, what percentage share of the partnership did the ACDBE control during the reporting period?** \_\_\_\_\_ **%**

**ACDBE Name:**

**ACDBE Contact:**

**ACDBE Phone:**

*(Partnership must comply with the FAA Guidance on Joint Ventures)*

**The Concessionaire achieved ACDBE participation through goods and services?**      **Yes**      **No**

**If yes, complete "Concessionaire Reporting Form: ACDBE Participation by Goods and Services."**

**Submit report to La Crosse Regional Airport, ACDBE Liaison Officer**

**Concessionaire Reporting Form: ACDBE Participation by Goods and Services**

Use multiple sheets as needed.

ACDBE Name and Address	Column A Description of Service Performed	Column B NAICS	Column C Date of Certification by W1 UCP	Column D National/Regional or Local Service <sup>1</sup>	Column E Airport Pro-Rated Share <sup>2</sup>	Column F ACDBE Participation in USD <sup>3</sup>	Column G ACDBE Dollar Value of Participation (COL-E x COL-F) <sup>4</sup>
				National/Regional Local			
				National/Regional Local			
				National/Regional Local			
				National/Regional Local			
				National/Regional Local			
				National/Regional Local			

Sheet \_\_\_\_\_ of \_\_\_\_\_

<sup>1</sup> Service performed exclusively to support LSE operation is considered local. All others are considered National/Regional  
<sup>2</sup> If Column D is local, weight is 100%. All other weight is the pro-rated share for LSE's estimated gross revenue by total estimated gross revenue for all other airports covered by agreement. [§ 23.53(f)]  
<sup>3</sup> Total ACDBE value to concessionaire for all airports ACDBE performs service under the applicable contract.  
<sup>4</sup> Multiply the Airport Weight by ACDBE participation to find LSE's ACDBE value.



## EXHIBIT D - TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).