



INDEPENDENT CONTRACTORS LICENSE

TERMINAL ADVERTISING SALES

at

La Crosse Regional Airport
La Crosse, Wisconsin

between

City of La Crosse

and

(Contractor)

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**INDEPENDENT CONTRACTORS LICENSE
La Crosse Regional Airport
La Crosse, Wisconsin**

THIS INDEPENDENT CONTRACTORS LICENSE ("License"), is made and entered into effective this _____ day of _____, 2015, by and between the **City of La Crosse**, (hereinafter referred to as "**City**"), a Wisconsin municipal corporation with offices located at 400 La Crosse St., La Crosse, Wisconsin 54601, and " _____", (hereinafter referred to as "**Licensee**"), a _____ corporation with offices located at _____, _____, _____, and a mailing address of _____, _____.

RECITALS

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 certain rights and privileges with respect thereto, and

WHEREAS, City and Licensee desire to enter into this License for Licensee to provide independent advertising sales at the Airport pursuant and subject to the terms and conditions contained in this License.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual and dependent promises set forth herein, the parties hereby agree as follows:

TERMS OF LICENSE

SECTION 1 – INCORPORATION BACKGROUND RECITALS

The background Recitals set forth above are true and correct statements of fact, and are hereby incorporated into this License by reference.

SECTION 2 – DEFINITIONS

As used in this License, the following defined terms shall have the meaning specified below:

1. "Airport Manager" shall mean the Airport Manager of the City's Airport, or his or her designee.
2. "Airsides Area" shall mean that area beyond the security checkpoint which requires either a badge or airline ticket.
3. "Aviation Board" shall mean the Board responsible for overseeing Airport operations.
4. "Business" shall mean an entity contracting for advertising services with City through the efforts of Licensee as an Independent Contractor of the City.
5. "City" shall mean the public body corporation existing under the laws of the State of Wisconsin which controls, operates, and maintains the La Crosse Regional Airport. The Aviation Board is authorized as agent for City within this License.
6. "Gross Receipts." Refer to Subsection 6.2.
7. "Landside Area" shall mean the public area prior to the security checkpoint which does not require a badge or airline ticket to be present.
8. "Non-secure Area" shall mean the Landside Area for which security protocols are not required.

9. "Commission Fee." Refer to Subsection 6.1.
10. "Secure Area" shall mean the Airside Area for which Transportation Security Administration and Airport security protocols are in effect.
11. "Sterile Area" shall mean that area of the Secure Area in which prohibited items are forbidden or must be controlled per the Transportations Security Administration.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Terminal Rehabilitation Project" shall mean a complete rehabilitation of the Terminal Building which will provide for the Concession space defined herein.

SECTION 3 – PURPOSE AND DESCRIPTION

Subsection 3.1 Purpose. City will provide to Licensee the authority to sell pre-defined and custom advertising packages within the Terminal Building (**Exhibit A**), and as modified from time-to-time by the City.

Subsection 3.1 Description. Licensee will perform, as an independent contractor for the City, the sale of advertising space within the Terminal Building. Licensee will be responsible for representing the Airport in a professional manner, selling pre-authorized advertising packages within the Terminal Building, coordinating initial placement terms, closing the sale, coordinating initial advertising placement with the City, and providing any additional information to the City as requested.

SECTION 4 - INDEPENDENT CONTRACTORS

Licensee enters into this License as, and shall continue to be, an independent contractor. All services provided by the Licensee shall be performed only by Licensee and Licensee's employees. Under no circumstances shall Licensee, or any of Licensee's employees, look to the City as his/her employer, or as a partner, agent, joint-venturer or principal. Neither Licensee, nor any of Licensee's employees, shall be entitled to any benefits accorded to the City's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Licensee shall be responsible for providing, at Licensee's sole expense, and in Licensee's name, unemployment, disability, worker's compensation and other insurance, as well as licenses and permits usual or necessary for conducting the services provided pursuant to this agreement.

SECTION 4 - TERM

The term of this License is for a five (5) year period commencing upon the effective date of this License, unless sooner terminated as hereinafter provided, and terminating on September 1, 2020.

SECTION 5 –PRIVILEGES AND OBLIGATIONS

Subsection 5.1 Privileges and Obligations. Licensee shall be authorized to sell pre-defined advertising space for the City Airport Terminal. An inventory of sellable space and pricing model shall be

provided to Licensee on a continuing basis. Licensee shall have an obligation to initiate contacts with Businesses to sell advertising placements in the Airport Terminal, complete a sales summary for the Business purchasing advertising, obtain the initial advertising content for placement, and close the sale of the advertising to the Business. The City shall provide all billing services, content coordination, account oversight, and advertising placement coordination after the initial sale is concluded and for the term of advertising services being provided to Business. Licensee shall retain exclusive rights to sell additional advertising to a Business once an ad is sold to that Business for a period of thirty six (36) months. The term of exclusive rights shall be extended to thirty six (36) months from the time of additional sales to each Business, after which the Business shall become the sole account of City.

Example:

- Licensee sells a video ad to Business Y and obtains a 36 month commission on that sale in addition to the exclusive right to sell additional advertising to Business Y for a period of 36 months.
- 12 months after the initial sale of the video ad Licensee sells a second static ad to Business Y. Licensee obtains a 36 month commission on the static ad and there are 24 months remaining in the original video ad sale. Licensee resets its ability to exclusively sell additional advertising to Business Y for a period of 36 months from the date of the static ad sale.

Subsection 5.2 Conflicts with Other Licensees. Multiple Licensees may be authorized to sell advertising on behalf of the City. A list of current advertising contracts and Licensees, and the Businesses for which they have sold advertising to, will be provided to all Licensees and no Licensee shall pursue sales with a Business which is being serviced by another Licensee. In the event of a conflict between Licensees the Airport Manager shall have the final say as to who shall be authorized to deal with a particular Business on behalf of the City. Business accounts which have become the City's accounts may not be contacted without permission from the City.

Subsection 5.3 Self Promotion. Licensee is not authorized to sell advertising to its own Business. Additionally, no Licensee is allowed to have any financial or personal relationship with a Business for which Licensee is selling advertising.

SECTION 6 – COMMISSION FEE

In consideration of selling advertising on behalf of the City, the Licensee shall be authorized to collect a Commission Fee from the City. Commission Fee shall be paid on a monthly basis, no later than the 20th of the month following the month for which payment is collected, to the Licensee for the month in which the advertising is paid to the City by the Business purchasing the advertising. Increases or decreases in advertising amounts purchased by Business shall be included in the monthly Commission Fee for a period of thirty six (36) months from each initial sale based on the current month. Any changes in the

monthly fee shall not increase or decrease the length of term for which payments are due to Licensee. In the event Licensee sells an additional advertising package to Business and Business terminates an existing package, the term of the new package shall be thirty six (36) months from the initial date of the original package so as to not extend the commission term when an additional sale was not made. (*Example:* Licensee sells a video ad to Business, 12 months later the Business purchases a static ad but cancels their video ad; in this case the video ad commission will only be paid for 24 months at the 45%/30% rate since the original ad was canceled) In the event a Business terminates advertising or does not pay their fees due, no Concession Fee shall be made to Licensee. In all instances the City shall be made whole of payments due to the City for advertising services prior to payment being made to Licensee. The following Commission Fee payments shall be authorized for a completed sale:

1. First 12 calendar months – Licensee shall receive a Commission Fee of 60% of each advertising placement sale.
2. Calendar months 13-24 – Licensee shall receive a Commission Fee of 45% of each advertising placement sale.
3. Calendar months 25-36 – Licensee shall receive a Commission Fee of 30% of each advertising placement sale.
4. Calendar months 37 and later – Licensee’s Commission Fee shall cease and the account shall fully become the City’s.

As an example, if Licensee sells a 30 views-a-day full screen ad for \$250 a month, Licensee would receive the following compensation for the months following as long as the Business remained a customer and continued advertising with the same package:

Months 1-12 = $(\$250.00/\text{month} \times 60\%) = \$150.00/\text{month}$
Months 13-24 = $(\$250.00/\text{month} \times 45\%) = \$112.50/\text{month}$
Months 25-36 = $(\$250.00/\text{month} \times 30\%) = \$75.00/\text{month}$
Month 37 plus = No Commission
Total commission received by month 37 = \$4,050.00

SECTION 7 – REPORTING

City shall provide a monthly report to Licensee of all currently active Business accounts for which Licensee is receiving a Commission Fee. Report shall include the name of the Business, month of payment, number of payments remaining, and current month’s payment amount.

SECTION 8 – REPRESENTATIVE OF CITY

Licensee in performing the duties authorized in this License is selling terminal advertising space on behalf of the City. It is expected that Licensee representatives perform their duties in a professional manner. At no times shall Licensee coerce, threaten, unduly pressure, or unprofessionally pressure a Business to provide advertising services on behalf of the City.

SECTION 9 - QUALITY AND CHARACTER OF SERVICE

Subsection 9.1 Quality of Advertising. Licensee shall offer for sale only high-quality advertising and those which are tasteful, free of adulteration, and appropriate for a public facility. Upon written notice to Licensee by the City of any violation of this provision, Licensee shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

Subsection 9.2 Airport Managers' Right to Object. The Airport Manager shall have the right to raise objections and deny any advertising proposal, the quality and quantity of services utilized, advertising pricing, the character of the service, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said Manager to be remedied by Licensee.

SECTION 10 – NON-DISCRIMINATION

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

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

SECTION 11 - IDEMNIFICATION

Subsection 11.1 Indemnification. To the fullest extent allowable by law, Licensee hereby indemnifies and shall defend and hold harmless, at Licensee'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 License

and in any manner caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Licensee, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this License, regardless if liability without fault is sought to be imposed on City. Licensee's aforesaid indemnity and hold harmless license 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 License 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 License.

Licensee 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. Licensee'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.

SECTION 12 - TERMINATION

Subsection 12.1 Termination by Licensee. Licensee may cancel this License and terminate all its obligations hereunder at any time. Termination by Licensee will result in no further financial obligation to Licensee by City and all existing advertising contracts shall become solely City's account.

Subsection 12.2 Termination by City. City may cancel this License and terminate all of its obligations hereunder at any time. If cancellation is due to a material breach of this License, City shall have no further financial obligation to Licensee by City and all existing advertising contracts shall become solely City's. If cancellation is at the City's discretion then existing payments shall be made as required under this License but Licensee shall no longer be authorized to sell advertising on behalf of the City. City may cancel all advertising at its discretion in which case no further payments shall be made to Licensee. If Licensee has stagnated in their duty to attract new advertising and has failed to gain a new Business account or additional advertising placement for the previous eighteen months this License shall be terminated and no further financial obligation or payment to Licensee by City shall occur.

Subsection 12.3 Notice of Termination. Termination of this License will be by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

SECTION 13 - NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this License 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 License for any subsequent default;

and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

SECTION 14 – NO PERSONAL LIABILITY

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

SECTION 15 – GOVERNING LAW

This License 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 License shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

SECTION 16 – 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 License. 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 17 – NOTIFICATION

Licensee shall:

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

SECTION 18 – SEVERABILITY

The provisions of this License are severable. If any provision or part of this License 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 License and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SECTION 19 – ASSIGNMENT, SUBLET, AND TRANSFER

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

SECTION 20 – 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 License 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 21 – CONFLICTS OF INTEREST

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

SECTION 22 – POLITICAL ACTIVITIES

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

SECTION 23 – ENTIRE AND SUPERSEDING LICENSE

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

SECTION 24 – AMENDMENT

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

parties.

SECTION 25 – TIME COMPUTATION

Any period of time described in this License by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this License 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 26 – NOTICES

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

To the City:	La Crosse Regional Airport	Copy to: Attn. City Attorney
	Attn: Airport Manager	City of La Crosse
	2850 Airport Rd	400 La Crosse Street
	La Crosse, WI 54603	La Crosse, WI 54601

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

SECTION 27 – PUBLIC RECORD LAW

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

SECTION 28 – NO THIRD PARTY BENEFICIARY

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

SECTION 29 – 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 30 – FORCE MAJEURE

City shall not be responsible to Licensee and Licensee 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 License 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 31 – GOOD STANDING

Licensee affirms that it is a Licensee 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. Licensee 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 33 - GOVERNMENTAL APPROVALS

Licensee acknowledges that several of the specific undertakings of City described in this License may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Licensee further acknowledges that this License is subject to appropriation by the La Crosse Common Council. City's obligation to perform under this License 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 34 – AUTHORITY

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

SECTION 35 – COUNTERPARTS

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

SECTION 36 – SURVIVAL

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

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

ATTEST:

LICENSEE:

By: _____ By: _____

Date: _____

ATTEST:

CITY OF LA CROSSE

By: _____ By: _____

Clinton Torp, Airport Manager

Date: _____

EXHIBIT A