

EXHIBIT D

NEWS, GIFT & RETAIL CONCESSION AGREEMENT AND LEASE  
AT THE  
GREEN BAY AUSTIN STRAUBEL INTERNATIONAL AIRPORT



JANUARY 1, 2022

## TABLE OF CONTENTS

### ARTICLE 1 DEFINITIONS

SECTION 1.01 DEFINITIONS .....	6
SECTION 1.02 CROSS REFERENCES.....	7

### ARTICLE 2 PREMISES

SECTION 2.01 PREMISES IN THE TERMINAL BUILDING .....	8
SECTION 2.02 AS IS CONDITION.....	8
SECTION 2.03 ACCESS .....	9

### ARTICLE 3 TERM

SECTION 3.01 TERM.....	9
SECTION 3.02 HOLDING OVER.....	10

### ARTICLE 4 RIGHTS AND SPECIFIC PRIVILEGES

SECTION 4.01 USE OF THE AIRPORT .....	10
SECTION 4.02 SPECIFIC RIGHTS OF CONCESSIONAIRE AT THE AIRPORT .....	10
SECTION 4.03 RELOCATION.....	11
SECTION 4.04 EMPLOYEE PARKING FACILITIES .....	11
SECTION 4.05 PROHIBITED ACTIVITY .....	12

### ARTICLE 5 MINIMUM STANDARDS OF SERVICE

SECTION 5.01 ADHERENCE TO STANDARDS.....	12
SECTION 5.02 HOURS OF OPERATION .....	12
SECTION 5.03 CONCESSION'S CONDUCT OF BUSINESS .....	13
SECTION 5.04 INTERIOR STORE SIGNAGE .....	13
SECTION 5.05 PRODUCT/MENU LABELING .....	14
SECTION 5.06 ENTRANCES.....	14
SECTION 5.07 MERCHANDISING.....	15
SECTION 5.08 ENTERTAINMENT SYSTEMS.....	15
SECTION 5.09 PUBLIC ADDRESS SYSTEMS.....	15
SECTION 5.10 INTENTIONALLY LEFT BLANK.....	15
SECTION 5.11 DELIVERIES.....	16
SECTION 5.12 PRODUCTS.....	16
SECTION 5.13 SECURITY .....	16

## **ARTICLE 6 CONSTRUCTION OF CAPITAL IMPROVEMENTS**

SECTION 6.01 CONSTRUCTION AND RENOVATIONS BY CONCESSIONAIRE.....	16
SECTION 6.02 CAPITAL INVESTMENT COMMITMENT .....	17
SECTION 6.03 MID-TERM REFURBISHMENT .....	18
SECTION 6.04 CONSTRUCTION SURETY BOND .....	18
SECTION 6.05 OPERATIONS DURING CONSTRUCTION, RENOVATIONS AND REFURBISHMENT.....	19

## **ARTICLE 7 REPORTS, RENTALS, CHANGES, AND FEES**

SECTION 7.01 RENT .....	19
SECTION 7.02 ANNUAL RECONCILIATION .....	21
SECTION 7.03 LATE CHARGES .....	21
SECTION 7.04 COUNTY AUDIT .....	22
SECTION 7.05 UTILITIES .....	22
SECTION 7.06 TAXES AND ASSESSMENTS.....	23

## **ARTICLE 8 INTENTIONALLY DELETED**

## **ARTICLE 9 MAINTENANCE AND OPERATION OF AIRPORT**

SECTION 9.01 COUNTY'S RESPONSIBILITIES .....	23
SECTION 9.02 CONCESSIONAIRE'S RESPONSIBILITIES.....	24
SECTION 9.03 COUNTY RIGHT TO INSPECT AND MAKE REPAIRS .....	25
SECTION 9.04 ALTERNATIONS AND IMPROVEMENTS .....	26
SECTION 9.05 JANITORIAL SERVICE.....	26
SECTION 9.06 ENVIRONMENTAL REGULATIONS .....	27

## **ARTICLE 10 DAMAGE OR DESTRUCTION OF PREMISES**

SECTION 10.01 DAMAGE OR DESTRUCTION .....	30
---	----

## **ARTICLE 11 INSURANCE AND INDEMNIFICATION**

SECTION 11.01 INSURANCE .....	33
SECTION 11.02 INDEMNIFICATION .....	37

## **ARTICLE 12 ASSIGNMENT OR SUBLEASE**

SECTION 12.01 GENERAL PROHIBITION.....	39
--	----

## **ARTICLE 13 DEFAULTS**

SECTION 13.01 DEFAULT.....	39
----------------------------	----

## **ARTICLE 14 TERMINATION**

SECTION 14.01 EVENTS PERMITTING TERMINATION BY CONCESSIONAIRE.....	41
SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION.....	41
SECTION 14.03 EVENTS PERMITTING TERMINATION BY COUNTY.....	42
SECTION 14.04 TERMINATION FOR CONVENIENCE.....	43
SECTION 14.05 NO CONSEQUENTIAL DAMAGES.....	44
SECTION 14.06 DAY DEFINED.....	44

## **ARTICLE 15 GENERAL PROVISIONS**

SECTION 15.01 RULES AND REGULATIONS.....	44
SECTION 15.02 COMPLIANCE WITH LAW.....	44
SECTION 15.03 NONDISCRIMINATION.....	45
SECTION 15.04 ACDBE.....	46
SECTION 15.05 SUCCESSORS AND ASSIGNS BOUND.....	48
SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U.S. GOVERNMENT.....	48
SECTION 15.07 NONWAIVER OF RIGHTS.....	48
SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308.....	49
SECTION 15.09 SEVERABILITY.....	49
SECTION 15.10 HEADINGS.....	49
SECTION 15.11 ASSIGNMENT BY COUNTY OR OTHER SUCCESSOR IN INTEREST.....	50
SECTION 15.12 QUIET ENJOYMENT.....	50
SECTION 15.13 FORCE MAJEURE.....	50
SECTION 15.14 ENTIRE AGREEMENT.....	50
SECTION 15.15 TIME IS OF THE ESSENCE.....	51
SECTION 15.16 AGREEMENT MADE IN WISCONSIN.....	51
SECTION 15.17 CUMULATIVE RIGHTS AND REMEDIES.....	51
SECTION 15.18 INTERPRETATION.....	51
SECTION 15.19 AGREEMENT MADE IN WRITING.....	51
SECTION 15.20 AUTHORIZATION TO ENTER AGREEMENT.....	52
SECTION 15.21 APPROVALS.....	52
SECTION 15.22 INTENTIONALLY LEFT BLANK.....	52
SECTION 15.23 EFFECTIVE DATE.....	52
SECTION 15.24 EXISTING AGREEMENTS TERMINATED.....	52
SECTION 15.25 NOTICES.....	52

SECTION 15.26 CAPACITY .....53

EXHIBIT A - PREMISES

EXHIBIT B - CONCESSIONAIRE'S PROPOSAL

EXHIBIT C - REQUEST FOR PROPOSALS

EXHIBIT D - ACDBE QUARTERLY REPORTING FORM

**GREEN BAY AUSTIN STRAUBEL INTERNATIONAL AIRPORT  
NEWS, GIFT & RETAIL CONCESSION OPERATING AGREEMENT AND  
TERMINAL BUILDING LEASE**

THIS AGREEMENT AND LEASE (hereinafter referred to as the "Agreement"), entered into this 1st day of January, 2022, by and between BROWN COUNTY, a municipal corporation of the State of Wisconsin (hereinafter "COUNTY"), and \_\_\_\_\_, a company organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter "Concessionaire"), with a principal office located at \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, County is the owner and operator of Green Bay Austin Straubel International Airport (the "Airport") located in Green Bay, Wisconsin, and has the right to lease portions of the Airport and to grant operating privileges thereon subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, Concessionaire desires to enter into this Agreement with the Airport for the providing of news/gift services; and

**WHEREAS**, the Airport deems it advantageous to the operation of its Airport to grant Concessionaire the rights and privileges as herein set forth:

**WHEREAS**, the COUNTY issued a request for proposals by RFP # \_\_\_\_\_, titled News, Gift & Retail Concessions at the Green Bay Austin Straubel International Airport"; and

**WHEREAS**, Concessionaire did under date of \_\_\_\_\_ submit a proposal for such services; and

**WHEREAS**, after due consideration of all proposals, the COUNTY did award the RFP to Concessionaire;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

### Section 1.01 Definitions:

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

“ACDBE” means an Airport Concessions Disadvantaged Business Enterprise as defined by 49 CFR Part 23.

"Airport" means Green Bay Austin Straubel International Airport.

“Concession Fee” shall mean the payment required from the Concessionaire as set forth in Article 7.

“County” shall mean the public body corporation existing under the laws of the State of Wisconsin which controls, operates and maintains the Green Bay Austin Straubel Airport.

“Director” means the Airport Director.

“Gross Receipts/Revenues” shall mean, as determined in the reasonable discretion of the County, 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 whatsoever nature paid or payable to Concessionaire by customers for all sales

made and services performed for cash, credit or consideration in connection with Concessionaire's operations at the Airport.

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 exclusion set forth below:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations.

"Lease year" means the twelve month period from January 1 through December 31.

"MAG" means the Minimum Annual Guarantee rental payment required hereunder.

"Premises" means the News, Gift & Retail Concessions Premises Plan (hereinafter "Premises Plan") as shown as an attachment to the RFP, Exhibit A.

"Proposal" means the Concessionaire's proposal attached as Exhibit B responding to COUNTY's RFP #\_\_\_\_\_.

"Request for Proposal" means the COUNTY's RFP #\_\_\_\_\_ attached as Exhibit C.

"Terminal Building" means the entire commercial air carrier building.

#### Section 1.02 Cross-References:

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified. All exhibits referenced or attached hereto are incorporated herein and form a part of this Agreement. In the event of a conflict between such exhibits and this document, this document shall govern, unless the Director provides otherwise in his or her discretion in written notice to the Concessionaire.



## ARTICLE 2

### PREMISES

#### Section 2.01 Premises in the Terminal Building:

The COUNTY lets to Concessionaire and Concessionaire does hereby lease from COUNTY the following concession units (collectively the Premises):

- Existing Retail Space (E130): Concessionaire shall provide a retail concession concept in this existing retail concession space. This is existing finished retail space, and Concessionaire may re-use all finishes, fixtures, and millwork that are not proprietary to the current concessionaire. Concessionaire shall provide all improvements required to rebrand this existing retail space, if said rebranding is necessary.
- Existing Retail Space (E163 & E164): Concessionaire shall provide a retail concession concept in this existing retail concession space. This is existing finished retail space, and Concessionaire may re-use all finishes, fixtures, and millwork that are not proprietary to the current concessionaire. Concessionaire shall provide all improvements required to rebrand this existing retail space, if said rebranding is necessary.

All build-out and renovation of the concession units shall meet the minimum capital investment as provided in Article 6.

Upon completion of facility improvements, the parties agree to modify the Premises Plan if necessary to reflect any revisions to the square footage leased hereunder. Such modified Premises Plan shall be incorporated into this Agreement upon its attachment.

#### Section 2.02 "As is" Condition:

Concessionaire has had the opportunity prior to execution of this Agreement to fully inspect the Premises. Concessionaire is familiar with the condition of the

Premises and is not relying upon any representations or warranties of COUNTY as to such conditions, nor any further improvements thereto by COUNTY, except as specifically provided herein.

Section 2.03 Access:

Concessionaire shall have the right to joint use, in common with others, of the public driveways of the Airport, including the use of the loading dock, for the conduct, operation and maintenance of the Concessions. All deliveries to Concessionaire shall be made to the loading dock area or other areas as allowed and in the manner established by the COUNTY which may include standard operating procedures mandated by the Transportation Security Administration or any such successor agency controlling airport security.

**ARTICLE 3**  
**TERM**

Section 3.01 Term:

This Agreement shall become effective on January 1, 2022 and continue for a term of ten (10) years, through December 31, 2031, subject to prior termination as provided in Article 14 herein. Concessionaire shall continue to operate in the existing retail spaces or if required shall operate a temporary retail concession kiosk adjacent to E130 while it is being built out. County may extend the term for two five (5) year renewal terms, provided that Concessionaire is not in material default on this lease. The first renewal term is January 1, 2032 through December 31, 2036. The second renewal term is January 1, 2037 through December 31, 2041. County shall provide Concessionaire with prior written notice of its intent to extend the lease term no less than one hundred and eighty (180) days prior to expiration of the then current term.

Section 3.02 Holding Over:

Should Concessionaire use the Leased Premises without the written consent of COUNTY after this Agreement has expired or terminated, Concessionaire shall be deemed a month to month tenant during the period of such use and subject to fees, charges, and provisions as set forth in this Agreement, other than Article II "Term". In such event, COUNTY shall have all of the remedies provided under applicable laws.

**ARTICLE 4**  
**RIGHTS AND SPECIFIC PRIVILEGES**

Section 4.01 Use of the Airport:

The COUNTY hereby grants to Concessionaire the non-exclusive right and privilege to, and shall have the obligation to, finance, design, construct, operate and manage, at its sole cost and expense, a high quality news, gift and retail concession in certain designated areas of the Terminal Building, as further described in Article 2.

Section 4.02 Specific Rights of Concessionaire at the Airport:

A. Non-Exclusive rights. Concessionaire shall have the non-exclusive privilege to operate the Premises as provided herein at the Airport for the sale of such items as gifts and souvenirs (e.g., jewelry, clothing, hats), sealed water bottles, sealed non-alcoholic beverage bottles, and certain prepackaged snacks intended to accompany prepared foods, news (e.g., newspapers, magazines, books), sundries (e.g., toiletries, non-prescription drugs, candies and gum), and other related items which are customarily offered for sale in airport gift shops.

Concessionaire understands and agrees that the airlines at the Airport are allowed to have coin-operated snack and beverage vending machines within their exclusive leaseholds solely for use by their own employees.

C. Prohibited uses. Concessionaire is prohibited from the sale of food or beverages for immediate consumption, with the exception of prepackaged snacks and sealed bottled beverages.

D. Conflicts. In the event of a conflict between Concessionaire and any other concessionaires at the Airport as to a specific item to be sold, the Airport Director shall decide which item of merchandise may be sold or provided by each such concessionaire and Concessionaire agrees to be bound by such written decision provided to Concessionaire by the Airport Director. In every such instance, the Airport Director's decision shall be absolute and final.

#### Section 4.03 Relocation

A. COUNTY Right to Relocate: In the event COUNTY requires any of the areas leased to Concessionaire for expansion, improvements, or development of the Airport, COUNTY reserves the right, on six (6) months prior written notice, to relocate or replace Concessionaire's improvements in substantially similar form at another generally comparable location in the Terminal Building, said relocation to be at COUNTY's sole cost and expense. "Generally comparable" shall mean a location with not less than ninety percent (90%) of the prior square footage and with access to customers reasonably similar to that of the prior location.

B. In the event of relocation, the parties agree to amend this Agreement as necessary to reflect any such approved relocation.

#### Section 4.04 Employee Parking Facilities:

Employees of Concessionaire shall have the right to park their own private vehicles in such areas of the Airport as the COUNTY may designate from time to time for airport employee parking. Parking fees may apply.

Section 4.05 Prohibited Activity:

Concessionaire is strictly prohibited from engaging in any activities on the Airport that is outside the Premises for the recruitment or solicitation of business. Concessionaire shall not place or install any carts, kiosks, inline stores, racks, stands, and display merchandise or trade fixtures on the Airport that are outside the Premises without the written approval of the Airport Director.

**ARTICLE 5**  
**MINIMUM STANDARDS OF SERVICE**

Section 5.01 Adherence to Standards:

Concessionaire, its employees, agents, and servants shall at all times observe, obey, and adhere to all standards, Rules and Regulations, and procedures which may from time to time be promulgated by the COUNTY. Further, Concessionaire, its employees, agents, and servants shall comply with all local, state, and federal laws and regulations and of government authorities having jurisdiction over Concessionaire's operation hereunder, including local, state and federal health agencies, and any inspections by such agencies.

Section 5.02 Hours of Operation:

Normal Operations: The Premises shall be continuously and uninterruptedly open for business and provide all services and sales activities as required by the Agreement at such hours as may be established by the Airport, from time to time, at its sole and absolute discretion. Concessionaire understands that the Premises shall be open seven days per week during hours of operation of the Airport, including local, state, and federal holidays. Concessionaire shall be required in each of the individual locations that comprise the Premises to prominently post in an area visible to the traveling public the hours for that specific location. At no time shall the

Premises be left unattended or temporarily closed while employees go on break or for other such reasons. Minimum hours of operation for the Premises shall be one hour before the first flight departure and thirty minutes before the last flight departure, daily.

**Operations During Periods of Emergencies:** In the event of an emergency (i.e., aircraft accident at Airport or otherwise), the COUNTY, as it deems necessary, may direct the Concessionaire to remain open beyond the Hours of Operation and provide all services and sales activities as required elsewhere herein during the emergency period.

**Obligations for Continuous Operation:** Concessionaire shall not at any time during the term of this Agreement leave the Premises, or any part thereof, vacant without the prior written consent of the COUNTY.

#### Section 5.03 Concessionaire's Conduct of Business:

Concessionaire shall operate its business in the Premises so as to maximize the Gross Receipts produced by such operation and shall maintain an adequate staff of employees and maintain on the Premises at all times a stock of merchandise as is reasonably designed to produce the maximum return to the COUNTY from the use of the Premises by a like concessionaire, and to assure the COUNTY a return of the greatest possible amount of Concession fees. Concessionaire shall have its display windows, signs, interior sales area, and permitted advertising displays adequately illuminated continuously during the Hours of Operation and such additional hours as the COUNTY may establish from time to time at its sole discretion.

#### Section 5.04 Interior Store Signage:

Concessionaire shall be required to install, operate and maintain signs, at its sole costs and expense, in each area of the Premises to market the products and/or services offered for sale in the Premises. All signs shall be accurate, showcase a cross section of product, and be visible. Said sign or signs shall be of a size, shape,

design and at a location or locations approved in advance and in writing by the Airport Director and in conformance with the COUNTY's overall directional graphics and sign program. It is understood, however, that said sign(s) and locations(s) may be changed and altered from time to time as mutually agreed upon. Notwithstanding any other provision of this Agreement, said sign or signs shall remain the property of the Concessionaire. Such signage shall assist and complement the overall effective and creative merchandising and marketing of the permitted product. All signage shall be professionally designed. No hand-lettered or hand-modified signs shall be permitted without the prior written approval of the Airport Director. All displays, posters, computer or TV projections, and sounds in the Premises shall reflect good taste, be professionally developed, and presented in such a manner as not to be offensive to the general public and be of such high caliber so as to reflect the dignity of the Airport and the services provided to the public by the COUNTY. All reasonable complaints from the public or other Airport tenants to the COUNTY, or from the COUNTY, will be forwarded to the Concessionaire in writing. Concessionaire shall remedy such offensive items immediately when notified of said complaints from the COUNTY.

Section 5.05 Product Labeling:

Concessionaire shall individually label each product, or list each product with its appropriate price in an area clearly visible to the customer.

Section 5.06 Entrances:

Concessionaire shall ensure that the public and customer entrances to the Premises are kept clear of any boxes, cartons, trash, refuse, barrels, or other similar items which would impede entrance/exit from the Premises. Piling of boxes, cartons, trash, refuse, barrels, or other similar items in an unsightly or unsafe manner within the Premises is prohibited.

Section 5.07 Merchandising:

Concessionaire shall be specifically required and obligated to have continuously in-stock and available for sale a full and complete stock of such product offered on its Premises. Concessionaire shall ensure that all such products are at all times attractively and logically arranged and that all displays are fully stocked with product.

Section 5.08 Entertainment Systems:

No radio, television, loudspeaker, or other similar device shall be installed without first obtaining in each instance the COUNTY's written consent, which consent may be withheld for any reason whatsoever, or for no reason. No antennas or aerial devices shall be erected in the room, interior walls or exterior walls of the Premises or Terminal Building without in each instance first obtaining the prior written consent of the COUNTY. Any radio, television, or other similar broadcast device, antenna, or aerial device so installed without such prior written approval shall be subject to removal and/or forfeiture without notice at any time. The cost of said removal shall be borne by the Concessionaire. No radio, television, loudspeaker, or other similar devices shall be used in a manner so as to be heard or seen outside the Premises without the prior written approval of the COUNTY, which approval may be withheld for any reason whatsoever, or for no reason.

Section 5.09 Public Address System:

Concessionaire shall not have the right to make, or cause to be made on its behalf, any announcements over the public address system in the Terminal Building.

Section 5.10 Intentionally Left Blank:



#### Section 5.11 Deliveries:

The Airport has designated a loading dock for the centralized receiving on the West end of the Terminal building. All deliveries to Concessionaire shall be made to the loading dock area or other areas as allowed and in the manner established by the COUNTY which may include standard operating procedures mandated by the Transportation Security Administration or any such successor agency controlling airport security.

The transfer or delivery of goods through any other route other than the loading dock is strictly prohibited.

#### Section 5.12 Products:

Upon execution of this Agreement, Concessionaire agrees to provide retail services substantially in accordance with the Concessionaire's Proposal. Any material change or alteration in the products authorized to be carried in the Premises shall also be subject to the prior approval by the Airport Director.

#### Section 5.13 Security:

Concessionaire shall comply with all applicable Airport Security requirements during the term of the Lease, including without limitation during construction, renovation or relocation of any facilities authorized hereunder; and Concessionaire shall be responsible for ensuring such compliance by all contractors, subcontractors or others working for or on behalf of Concessionaire.

## **ARTICLE 6 CONSTRUCTION OF CAPITAL IMPROVEMENTS**

#### Section 6.01 Construction and Renovations by Concessionaire:

The Concessionaire shall make improvements, at its sole cost and expense, and provide and install all equipment, fixtures, utilities, plumbing, conduit, wires,

antennas, and any other infrastructure and materials in a minimum amount of \$150,000 for the build out of areas E130 and E163/E164. Concessionaire may install a temporary retail concession kiosk while the improvements are being completed.

The foregoing capital improvements shall be subject to the reasonable approval of the Director, shall comply with all applicable building and other codes, laws and regulations, and shall be completed by April 1, 2022, pursuant to the following schedule:

- Conceptual design submission– Concessionaire to submit conceptual plans for build-outs/renovations, 10 calendar days after contract award.
- Schematic design submission – Concessionaire to submit schematic design plans no later than December 1, 2021;
- 75% design document submission – Concessionaire to submit no later than December 15, 2021;
- 100% design document submission – Concessionaire to submit no later than December 28, 2021; and
- Completion of construction – No later than April 1, 2022.

#### Section 6.02 Initial Capital Investment Commitment:

A minimum Capital Investment Commitment of \$150,000 is required for areas E130 and E163/E164. Of this amount, not less than 85% must be expended on construction “hard costs” of materials, direct labor, equipment, finishes, signage, lighting, HVAC, and other construction costs exclusive of “soft costs” of design, engineering, construction supervisions, permitting, specialist consultants, overheads, corporate construction administration, and other fees. The COUNTY will not be responsible for costs that exceed the minimum investment requirement.

The Concessionaire will be required to document its construction costs and submit the final document to the Airport within sixty (60) days of completion of the construction. In order to ensure that the committed investment is made, the

Concessionaire will be required to pay the Airport any difference between the investment minimum and the actual costs of construction if such costs are less than the minimum required investment.

#### Section 6.03 Refurbishment After Initial Term:

A refurbishment minimum of \$100,000 shall be invested in the Premises by Concessionaire, if after the initial term, the Airport exercises the first renewal. The refurbishment minimum is not for ordinary or deferred maintenance, which is an ongoing requirement, but a commitment to renew and replace worn surfaces such that it would constitute additional capital investment. The refurbishment requirement, shall be completed during the first 6 months of the first renewal term, if exercised by the Airport (i.e. January 1, 2032 through December 31, 2036), and the refurbishment plan is subject to the prior consultation and approval by the Airport Director, which shall not be unreasonably delayed or denied. The Concessionaire will be required to document its refurbishment costs and submit the final document to the Airport within sixty (60) days of completion of the refurbishment. In order to ensure that the committed investment is made, the Concessionaire will be required to pay the Airport any difference between the investment minimum and the actual costs of refurbishment if such costs are less than the minimum required investment.

#### Section 6.04 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 County, and without expense to County, a surety bond, issued by a surety Concessionaire licensed to transact business in the State of Wisconsin and satisfactory to and approved by County 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 County from any liability, losses, or damages arising there from.

Section 6.05 Operations during Construction, Renovation and Refurbishment

At all times during construction, renovation or refurbishment of the Premises, Concessionaire shall plan and carry out the construction, renovation and/or refurbishment around the need to keep the retail services hereunder operational during the minimum hours of service. In the event that conflict cannot reasonably be avoided, Concessionaire shall take all reasonable steps to minimize any unavoidable conflict. Concessionaire shall include such obligation in any contract with a third party for such construction, renovation and/or refurbishment.

**ARTICLE 7  
REPORTS, RATES, CHARGES AND FEES**

Section 7.01 Rent:

The Concessionaire will annually pay either the Minimum Annual Guarantee (MAG) or the percentage rent, whichever is greater.

A. Minimum Annual Guarantee. Concessionaire agrees to pay a Minimum Annual Guarantee for the use of the concession spaces outlined in its Proposal for each of the ten Lease Years as follows:

1/1/22 – 12/31/22: \_\_\_\_\_

1/1/23 – 12/31/23: \_\_\_\_\_

1/1/24 – 12/31/24: \_\_\_\_\_

1/1/25 – 12/31/25: \_\_\_\_\_

1/1/26 – 12/31/26: \_\_\_\_\_

1/1/27 - 12/31/27: \_\_\_\_\_

1/1/28 – 12/31/28: \_\_\_\_\_

1/1/29 – 12/31/29: \_\_\_\_\_

1/1/30 – 12/31/30: \_\_\_\_\_

1/1/31 – 12/31/31: \_\_\_\_\_

The Minimum Annual Guarantee (MAG) shall be negotiated between the Concessionaire and the Airport at the time of term renewals, if the renewal terms are exercised by the Airport. MAGs for the renewal term years shall not be an amount less than the year 2031.

B. Percentage Rent. Concessionaire agrees to pay a Percentage Rent for the use of the concession spaces outlined in its Proposal for each of the ten Lease Years as follows:

1/1/22 – 12/31/22: \_\_\_\_\_

1/1/23 – 12/31/23: \_\_\_\_\_

1/1/24 – 12/31/24: \_\_\_\_\_

1/1/25 – 12/31/25: \_\_\_\_\_

1/1/26 – 12/31/26: \_\_\_\_\_

1/1/27 - 12/31/27: \_\_\_\_\_

1/1/28 – 12/31/28: \_\_\_\_\_

1/1/29 – 12/31/29: \_\_\_\_\_

1/1/30 – 12/31/30: \_\_\_\_\_

1/1/31 – 12/31/31: \_\_\_\_\_

The Percentage Rent shall be negotiated between the Concessionaire and the Airport at the time of term renewals, if the renewal terms are exercised by the Airport. Percentage Rent for the renewal term years shall not be an amount less than the year 2031.

Concessionaire shall provide a monthly written statement prepared and certified by a financial officer of Concessionaire of the gross revenues derived from the previous calendar month's operations, accompanied by a full payment of the percentage fee on the monthly gross revenues or 1/12<sup>th</sup> of the respective year's MAG, whichever is greater. Percentage rent payment is due on the 15<sup>th</sup> of each month based upon the prior calendar month's sales.

Section 7.02 Annual reconciliation:

Within ninety (90) days after the close of each Lease Year (i.e. by March 31) Concessionaire shall furnish COUNTY a sworn statement certified by a certified public accountant showing all Gross Revenues derived from Concessionaire's operation hereunder for the immediately prior Lease Year. Said financial statement shall be accompanied by a certified public accountant's report expressing his/her opinion as to the fairness of presentation of the Gross Revenues on the basis specified in this Agreement. Said certified financial statement shall show all revenues derived from Concessionaire's operations with no exclusions. If the aggregate payments made for said Lease Year hereunder are less than the Minimum Annual Guarantee, then Concessionaire shall pay COUNTY the difference between the amounts previously paid for the said Lease Year and the MAG. Said payment shall be submitted with the certified financial statement.

Section 7.03 Late charge

A late charge of 1.5% of the outstanding balance per month shall be charged and applied to any payment which is not made when it is due. Nothing herein, however, waives COUNTY's right, in its discretion, to terminate this Lease Agreement for late payment.

Section 7.04 COUNTY Audit:

COUNTY reserves the right to conduct an audit of Concessionaire's records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to COUNTY of more than Two Percent (2%) in any year, Concessionaire shall pay to COUNTY, in addition to the amount owed and any applicable late charges, the reasonable cost to COUNTY of its audit.

Section 7.05 Utilities:

A. Concessionaire shall have the right, at its sole cost and expense, to use the utility service facilities located on the Premises or to run additional utility service to the Premises at the commencement of the Agreement at Concessionaire's sole cost and expense. All utility consumption at the Premises shall be separately metered and invoiced monthly to Concessionaire by County. If Concessionaire's operations require additional utility service, the expense of providing additional utilities shall be at the sole cost and expense of Concessionaire, provided that the Airport's obligation to allow Concessionaire to add utilities hereunder shall be limited to the availability of any required or requested utilities in the Airport, and nothing herein shall obligate the Airport to provide any utility to Concessionaire that is not otherwise available to the Airport. If Concessionaire requires any core drilling through the floor and Airport has approved such core drilling, Concessionaire will be required, at its sole cost and expense, to x-ray the floor prior to the drilling to avoid any structural elements within the cement floors.

B. COUNTY shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, ventilation, heat, water, and sewerage facilities for the Terminal building public use areas including the Concessionaire's Premises; adequate illumination in the COUNTY and public use space; and janitorial service in the terminal building, excluding Concessionaire's Premises.

C. Concessionaire shall provide additional air conditioning in certain Premises if Concessionaire's operations cause higher temperatures in the Terminal.

Section 7.06 Taxes and Assessments:

Concessionaire agrees to pay promptly when due, and not to permit to become delinquent, levies, taxes, assessments, excises, permit fees, license fees, charges, fines, impositions or burdens of whatsoever kind and nature, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or for any public improvements or utility services (hereinafter "impositions") which, at any time during the term of this Lease, may be created, levied, assessed, imposed or charged upon or with respect to Premises leased to Concessionaire, or any part thereof, by any federal, state, county, municipal or other authority, which imposition would be valid and applicable to Concessionaire irrespective of this subsection. Nothing herein contained shall be construed as stopping or preventing Concessionaire from contesting in good faith, however, the validity or applicability to its operations hereunder of any such law, ordinance, rule, regulation, tax assessment, excise fee or charge, including the exhaustion of all appeal rights, provided that the Premises shall not be in danger of being forfeited nor the COUNTY exposed to any threat of lien, fine, penalty or violation.

**ARTICLE 8**

**BOND REQUIREMENTS AND FLOW OF FUNDS**

INTENTIONALLY DELETED.

**ARTICLE 9**

**MAINTENANCE AND OPERATION**

Section 9.01 COUNTY's Responsibilities:

A. COUNTY agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain, operate and keep the Airport in good repair.



B. COUNTY, shall, with reasonable diligence, operate and maintain and keep in good condition the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by COUNTY at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Concessionaire. COUNTY shall keep the Terminal Building, except Concessionaire's Premises, in a neat, orderly, sanitary, and presentable condition. COUNTY shall be responsible for the maintenance and operation of COUNTY and public use space.

Section 9.02 Concessionaire's Responsibilities:

A. Concessionaire shall, at all times keep its Premises neat, orderly, sanitary, and presentable; and shall cause to be removed from its Premises all waste, garbage, recycling and rubbish, and agrees to deposit the same in the proper receptacles on the West end of the terminal building. If any waste, garbage, rubbish or recycling items do not fit or are prohibited from the receptacles, Concessionaire shall remove the items from the Airport Premises at its own expense.

B. Concessionaire shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Premises, except structural repairs, conditions pre-existing execution of this Agreement and not reasonably discoverable by Concessionaire, and repairs necessitated by latent defects of facilities provided by the COUNTY. Concessionaire shall be responsible for providing, at its sole cost, all movable furniture, personal property, equipment, and trade fixtures in its Premises at all times.

C. Concessionaire shall immediately repair any damage in any space at the Airport occasioned by the fault or negligence of Concessionaire, its servants, agents, employees, licensees, and invitees.

D. Except as provided in Section 5.04, Concessionaire shall not erect, maintain, or display on its Premises in the public view any billboards, advertising, or materials without the prior written approval of the Director.

E. Concessionaire expressly agrees that COUNTY shall not be liable to Concessionaire, for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority, except to the extent such loss or damage is caused by the negligence or willful acts or omissions of COUNTY.

Section 9.03 COUNTY's Right to Inspect and Make Repairs:

COUNTY, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right at any time in the case of emergencies, and otherwise during normal business hours upon reasonable notice, to enter upon Concessionaire's Premises, accompanied by an authorized Concession representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Concessionaire has complied and is in compliance with the terms and conditions of this Agreement.
- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as COUNTY reasonably deems necessary, if Concessionaire fails to perform its obligations in a timely manner under this Article 9, and to recover the actual cost of such maintenance, cleaning, or repair from Concessionaire, plus a fifteen-percent (15%) administrative charge from Concessionaire to be paid with the next rent payment which is due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as COUNTY reasonably deems necessary, and which is the responsibility of the COUNTY under this Agreement.

#### Section 9.04 Alterations and Improvements:

A. Concessionaire shall make no repairs, alterations, additions, improvements to, or installations on the space leased under this Agreement without the prior written approval of the Airport Director.

B. Plans and specifications for such work shall be filed with and subject to the approval of the Airport Director and all work shall be done in accordance with local ordinances and State and federal laws and regulations. All required permits shall be obtained by the Concessionaire prior to the commencement of any work.

C. All alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with COUNTY upon completion.

#### Section 9.05 Janitorial Services:

A. Litter Control: Concessionaire shall provide, at its sole cost and expense, reasonable janitorial services in the areas leased by Concessionaire. Concessionaire shall provide, at its sole cost and expense, the necessary receptacles and arrangements for adequate sanitary handling and disposal to the Airport's recycling and waste receptacles on the West end of the Terminal building. Concessionaire shall be responsible for pickup and control of litter in the areas leased to Concessionaire. The Director will give written notice to the Concessionaire of any specific unacceptable conditions resulting from or in the Premises. The Concessionaire will have twenty-four (24) hours in which to remedy and if it does not do so, the COUNTY may levy a cleaning surcharge not to exceed Five Hundred Dollars (\$500) with written notice to Concessionaire of such surcharge. Said surcharge shall be due upon receipt of the notice of the surcharge and shall be subject to the late payment and interest charge provisions of this Agreement.

B. COUNTY requires the Concessionaire to participate in its recycling program which may be imposed by Airport rules or by local, state or federal law or regulation.

Concessionaire shall defend, indemnify and hold the COUNTY harmless from any cost, expense, claim, fine or liability, including without limitation attorney's fees and court costs, arising out of or resulting from Concessionaire's storage, collection, transportation or disposal of any trash, garbage or other refuse hereunder, including without limitation, the disposal of any waste deemed to be hazardous under any federal, state or local law or regulation. This obligation of defense and indemnification shall remain in full force and effect after termination or expiration of this Lease.

Section 9.06 Environmental Regulations:

Concessionaire shall comply with the following environmental regulations:

A. Concessionaire shall not cause or permit any hazardous materials, as defined in applicable local, state or federal law, to be stored or used on or about the Airport by Concessionaire, its affiliates, agents, or employees, except in compliance with Environmental Laws as described below and as permitted by the COUNTY.

B. Concessionaire shall at all times and in all respects comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of hazardous materials on, about, or from the Premises (collectively, "Environmental Laws").

C. Concessionaire shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required by any environmental law or regulation for Concessionaire's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. If required by any environmental law or regulation, Concessionaire shall cause any and all hazardous materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal.

Concessionaire shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such hazardous materials. Upon the expiration or earlier termination of the term of this Agreement, Concessionaire shall cause all of Concessionaire's hazardous materials to be removed from the Airport and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Concessionaire shall not take any remedial action in response to the presence of any hazardous materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any hazardous materials in any way connected with the Airport without first notifying the COUNTY in writing of Concessionaire's intention to do so and affording the COUNTY ample opportunity to appear, intervene, or otherwise appropriately assert and protect the COUNTY's interest with respect thereto. Any remedial action shall be conducted by the Concessionaire as required by, and in compliance with, Environmental Laws.

D. If at any time Concessionaire shall become aware that any hazardous material has come to be located on or about the Airport in violation or potential violation of Environmental Laws, Concessionaire shall, immediately upon discovering such presence or suspected presence of the hazardous material, provide the COUNTY with written notice of that condition. In addition, to the extent that Concessionaire has notice, Concessionaire shall immediately notify the COUNTY in writing of (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened pursuant to any Environmental Laws, (2) any claim made or threatened by any person against Concessionaire or the COUNTY relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any hazardous materials, and (3) any reports made to any local, state, or federal environmental agency arising out of or in connection with any hazardous materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Concessionaire shall also supply to the COUNTY as promptly as possible, and in any event within five (5) business days after Concessionaire first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Concessionaire's use thereof, and Concessionaire shall promptly deliver to the COUNTY copies of hazardous waste manifests reflecting the legal and proper disposal of all hazardous materials removed from the premises.

E. Concessionaire shall indemnify, defend and hold harmless the COUNTY, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages (including without limitation, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises) costs, or expenses (including without limitation reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the Leased Premises or any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by the Concessionaire's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters in its activities hereunder, except to the extent caused by the negligence or willful acts or omissions of the COUNTY. Concessionaire's obligations under this Paragraph (E) shall include, without limitation, and whether foreseeable or enforceable, any and all costs incurred in connection with any investigation of the condition of Airport or other property, and any and all costs of any required or necessary repair, cleanup, decontamination or remediation of Airport or other property and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith.

F. Notwithstanding any provisions to the contrary, the COUNTY, at its sole discretion, shall have the right to enter and inspect the Premises, including Concessionaire's business operations thereon, upon reasonable notice and in a manner so as not to unreasonably interfere with the conduct of Concessionaire's business, to investigate the presence or potential presence of hazardous materials

on the premises in violation of Environmental Laws. During such inspection, the COUNTY shall have the right to visually inspect the Premises and to take such soil, sludge or groundwater samples and conduct such tests as it may determine, in its sole discretion, to be necessary or advisable. COUNTY shall pay for the costs of such investigations; provided, however, that if the results of such investigation indicate the presence of hazardous materials on or about the Premises in violation of Environmental Laws, then Concessionaire shall fully reimburse the COUNTY for such expenses within ten (10) days of receiving the COUNTY's written request for reimbursement, unless Concessionaire can provide reasonable evidence that such violation was not caused by Concessionaire.

G. The provisions of this section 9.06 shall survive the expiration or early termination of this Agreement.

## **ARTICLE 10**

### **DAMAGE OR DESTRUCTION**

Section 10.01 Damage or Destruction:

**MINOR DAMAGE.** If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of the Leased Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Leased Premises untenable or unusable for the purpose intended as reasonably determined by the Airport Director, the same shall be repaired to usable condition with due diligence by the County.

**SUBSTANTIAL DAMAGE.** If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of Leased Premises, shall be so extensively damaged by fire, or other casualty, as to render any portion of said Leased Premises untenable but capable of being repaired, as reasonably determined by the Airport Director, the same shall be repaired to usable condition with due diligence by the County. In such case, the rentals payable hereunder with

respect to affected Leased Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the part of the area rendered untenable or unusable for the purpose intended bears to total Leased Premises of the same category and area. Such abatement in rent will continue until such time as such affected Leased Premises shall be restored adequately for Concessionaire's use. The County shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space.

**TOTAL DAMAGE** If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of the Leased Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Leased Premises incapable of being repaired, as reasonably determined by the Airport Director, the County shall notify Concessionaire within a period of sixty (60) days after the date of such damage of its decision whether to reconstruct or replace said space. However, the County shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to the affected Leased Premises shall be paid up to the time of such damage and thereafter shall cease until such time as reasonable and comparable replacement or reconstructed space shall be available for use by Concessionaire.

In the event the County elects to reconstruct or replace affected Leased Premises, the County shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction or replacement is being completed, at a rental rate not to exceed that provided in this Agreement for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the County is not diligently pursuing such replacement or reconstruction, within three (3) months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the County thirty (30) days advance



written notice, to delete the affected Leased Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Leased Premises, unless such damaged or destroyed premises prevent Concessionaire from operating on Airport, in which case the Concessionaire may terminate the Agreement.

In the event the County elects not to reconstruct or replace affected Leased Premises, the Airport Director shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Leased Premises. Concessionaire shall have the right, upon giving the County thirty (30) days advance written notice, to delete the affected Leased Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Leased Premises, unless the loss of such premises prevents Concessionaire from operating on Airport, in which case the Concessionaire may terminate the Agreement.

***SCOPE OF RESTORATION OF PREMISES*** The County's obligations to repair, reconstruct or replace affected premises under the provisions of this Article 10 shall in any event be limited to using due diligence and best efforts to restore affected Leased Premises to substantially the same condition that existed prior to any such damage and shall further be limited to the extent of insurance proceeds available to the County for such repair, reconstruction or replacement. Concessionaire agrees that if the County elects to repair, reconstruct or replace affected premises as provided in this Article 10, then Concessionaire shall proceed with reasonable diligence and at its sole cost and expense to repair, reconstruct or replace its signs, fixtures, furnishings, equipment and other items provided or installed by Concessionaire in or about the Leased Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction. However, in the event County chooses not to replace space in kind, Concessionaire may delete said premises from its obligation.

In lieu of the County's repair, reconstruction or replacement of the affected premises, if Concessionaire requests to perform said function with respect to damage, the County may in its sole discretion, allow the Concessionaire to perform such work. Concessionaire shall not be performing such work as an agent or contractor of the County. The County shall reimburse Concessionaire for the cost of such work performed by Concessionaire that was otherwise the obligation of the County if prior to performing such work, the County and Concessionaire agree that such work is the obligation of the County to perform.

***DAMAGE FROM CONCESSIONAIRE NEGLIGENCE OR WILLFUL ACT.***

Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act of Concessionaire, its agents, servants or employees, or those under its control, Concessionaire Leased Premises shall be damaged or destroyed by fire, casualty or otherwise, there shall be no abatement of rent during the restoration or replacement of said Leased Premises and Concessionaire shall have no option to delete the affected Concessionaire Leased Premises from this Agreement under the provisions of this Article 10. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to the County by reason of such damage or destruction, Concessionaire shall pay the amount of such additional costs to the County.

**ARTICLE 11**

**INSURANCE AND INDEMNIFICATION**

Section 11.01 Insurance:

A. Concessionaire shall, without expense to COUNTY, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage in the following amounts:

<u>Description</u>	<u>Limit of Liability</u>
Comprehensive General Liability, Products Liability and Vehicle Liability, including owned, hired or non-owned	
1) Bodily Injury	\$2,000,000 each person \$2,000,000 each occurrence
2) Property Damage	\$2,000,000 each occurrence
3) Products Liability	\$2,000,000 each occurrence
4) Worker's Compensation, Employer's Liability Insurance (or Maine statutory amount, whichever is greater)	\$100,000 \$500,000

All such insurance may contain a deductible provision not to exceed Ten Thousand Dollars (\$10,000) per occurrence, unless otherwise approved in writing by the COUNTY. All such insurance shall cover the obligation of indemnification provided hereunder.

B. Contractors: In addition to the foregoing, during construction of the Project, Concessionaire shall require its contractor or contractors to procure and maintain comprehensive general liability covering bodily injury and property damage and in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence and naming the Concessionaire and the COUNTY of Brown, as an additional insured thereon.

C. Revisions: Concessionaire and the COUNTY understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement. Concessionaire agrees that it will increase such minimum limits by reasonable amounts upon receipt of notice in writing from the COUNTY. Such notices to change shall, in general, be issued no more often than every second (2) year of the agreement term or renewal thereof. The COUNTY may

take note of damage awards being granted by the Courts, however, and direct a reasonable increase in the minimum limits of the insurance requirements at any time during the term hereof.

D. Property Insurance: Concessionaire shall procure and maintain all risks fire and casualty insurance, in an amount no less than 80% of the replacement value of the all of the areas leased by Concessionaire under this Lease and related improvements, equipment and fixtures, and naming the Concessionaire and COUNTY as insureds, as their interests may appear. The deductible provision shall not exceed \$10,000 except with the permission of the Director. Such insurance may be included in blanket policies and shall be placed with responsible insurers authorized to do business in the State of Wisconsin.

E. Policies: All policies of insurance required herein shall be in a form and issued by a company or companies satisfactory to the COUNTY, and approved to do insurance business in the State of Wisconsin. Each such policy shall provide that such policy may not be materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Director. Each liability policy required to be obtained hereunder shall name the COUNTY as an additional insured thereunder and shall be on an occurrence basis. All policies required hereunder shall be primary to any insurance or self-insurance which COUNTY may maintain for its own benefit.

F. Insurance Certificates: Certificates or other evidence of insurance coverages required of Concessionaire in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the COUNTY prior to the execution of this Agreement and annually thereafter. Concessionaire shall at all times during the term of this Agreement provide COUNTY with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier. At least thirty (30) days prior to the expiration of any then-current policy of insurance, Concessionaire shall deliver to the COUNTY evidence showing that such insurance coverage has been renewed.

Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage, Concessionaire shall deliver to the COUNTY evidence that the required insurance has been reinstated or provided through another insurance company or companies. It shall be Concessionaire's responsibility throughout the term of this Agreement to provide or have provided to the Director renewal insurance certificates no less than thirty (30) days prior to such renewal. If Concessionaire does not notify COUNTY by the effective date of a cancellation or change, this will constitute a breach by Concessionaire and permit COUNTY to terminate this Agreement pursuant to Section 14.03, or to purchase such insurance and charge the cost thereof to Concessionaire as additional rent.

G. COUNTY's Rights: If at any time Concessionaire should fail either to obtain or to maintain in force the insurance required herein, the COUNTY shall notify Concessionaire of its intention to purchase such insurance for Concessionaire's account; and, if Concessionaire has not delivered evidence of insurance to the Director prior to the date on which the current insurance expires, the COUNTY may effect such insurance by taking out policies in companies satisfactory to the COUNTY. Such insurance shall be in amounts no greater than those stipulated herein or as may be in effect from time-to-time. The amount of the premiums for such insurance obtained by the COUNTY shall be payable by Concessionaire as additional rental immediately upon demand therefor by COUNTY.

H. Any insurance limits required hereunder are minimum limits only and are not intended to restrict liability imposed under this Agreement.

I. COUNTY shall have no liability for any premiums charged for such coverage, and the inclusion of COUNTY as an additional insured is not intended to, and shall not make COUNTY a partner or joint venture with Concessionaire in its operations at the Airport.

Section 11.02 Indemnification:

A. To the fullest extent permitted by law, Concessionaire shall be responsible for all liability arising out of its operations under this Agreement except that resulting from the sole negligence or willful misconduct of COUNTY, and Concessionaire shall indemnify, defend, and hold the COUNTY, and its officers, agents, and employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property (including without limitation COUNTY property or personnel), including all reasonable costs for investigation and defense thereof (including but not limited to reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or Concessionaire's negligent act or omission or willful misconduct in the use of, occupancy of, or operations of Concessionaire at or about, the Airport or the negligent acts or omissions or willful misconduct of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur. Concessionaire shall maintain contractual liability insurance to cover this indemnification agreement. The Director shall give to Concessionaire prompt notice of any such claims or actions. Concessionaire shall also use counsel reasonably acceptable to COUNTY in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement with respect to matters arising before such expiration or early termination.

Concessionaire, furthermore, shall indemnify, defend and hold the COUNTY and its officers, agents and employees harmless, from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands of any character, name or description, arising out of, brought for or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, the Solid Waste Management Act, the Solid Waste Disposal Act, the Hazardous

Sites Cleanup Act, the Clean Water Act, all applicable OSHA Regulations, or any other state or federal environmental law or regulation or any liabilities that may be imposed pursuant thereof, as a result of or incident to this Agreement and/or the use of occupancy of or operations of Concessionaire, its officers, agents, employees, contractors, subcontractors, licensees, or invitees at or about the Airport.

B. Concessionaire shall, at its own cost and expense defend any and all suits or actions, just or unjust, which may be brought against COUNTY or in which COUNTY may be impleaded with others upon any such above-mentioned matters, claim or claims, including claims of contractors, employees, laborers, material men, and suppliers. COUNTY shall have the right to participate in such suits and no action shall be settled without prior consent of the COUNTY. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the COUNTY which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

C. Concessionaire hereby, expressly and without reservation, waives any defense or immunity to which it might otherwise be entitled under Workers' Compensation laws, the general statutes of Wisconsin or judicial decisions, disallowing or limiting the foregoing indemnification, and consents to a cause of action for indemnity. Concessionaire further waives subrogation rights against the COUNTY pursuant to Workers Compensation laws and will defend and indemnify the COUNTY from any such subrogation claims.

D. Any Mechanic's Lien or any other lien which may be filed against COUNTY property as a result of the any act or omission of Concessionaire, its officers, agents, employees, contractors, subcontractors or anyone for whose action Concessionaire may be legally liable, and arising out of any activities under this Agreement shall be defended (by counsel reasonably acceptable to the COUNTY) and promptly discharged by Concessionaire at its own expense. If the Concessionaire should fail, either to defend the COUNTY against the lien or to discharge it, then the COUNTY

may do so at Concessionaire's expense. In the event of such an undertaking by the COUNTY, the Concessionaire will promptly reimburse the COUNTY for all of its costs and expenses in so doing, including, but not limited to, reimbursement of the COUNTY's reasonable counsel fees, as well as costs which may be incurred by it in substituting a bond in place of the lien.

E. Concessionaire agrees to require all independent contractors that enter the Airport to perform work for or to supply to, Concessionaire to maintain liability and workers compensation insurance coverage in the amounts provided in Section 11.01 and to name BROWN COUNTY as an additional insured on such liability policies.

F. Concessionaire agrees to assume all risks of loss to its property resulting from any fire, theft, and/or vandalism, occurring in the Concessionaire's Premises.

## **ARTICLE 12 ASSIGNMENT OR SUBLEASE**

### Section 12.01 General Prohibition:

Concessionaire shall not at any time transfer, convey, assign, sublet, mortgage, pledge, or encumber its interest under this Agreement, or any part of the Premises without the prior written approval of the COUNTY. Any failure of Concessionaire to obtain COUNTY's prior approval is a material breach of this Agreement.

## **ARTICLE 13 DEFAULTS**

### Section 13.01 Default:

If Concessionaire (1) fails to pay rent or any other payment due hereunder within ten (10) calendar days after receipt of written notice of a past due account, or (2) fails to perform and/or cure any of its other covenants and agreements within thirty (30) calendar days after receipt of written notice, provided however, that if such



default cannot reasonably be cured in such thirty (30) calendar day period, then Concessionaire shall have additional reasonable time to cure such default so long as Concessionaire diligently proceeds to cure; or (3) fails to continue to complete, in a timely manner, any of its covenants and agreements after performance is commenced, or after the filing of any petition, proceedings, or action by, for, or (4) against Concessionaire under any insolvency, bankruptcy, or reorganization act of law, then, at the election of COUNTY:

1. Without terminating this Agreement, COUNTY may reenter the space and improve and relet all or any part of it to others, for the account of Concessionaire; the account of Concessionaire shall include, but not be limited to, costs of renovation necessary to accommodate a new tenant and costs of renovation necessitated by the neglect of Concessionaire, its agents, or its employees. Concessionaire shall promptly reimburse COUNTY for any deficiency in rentals or other payments received under such subletting (after deducting renovation costs), as compared to Concessionaire's obligations hereunder.
2. At any time before or after a reentry and reletting as provided in this Section, COUNTY may terminate Concessionaire's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by COUNTY for past due and future rentals and other obligations of Concessionaire. COUNTY shall have all additional rights and remedies as may be provided to landlords by law
3. In the event of Concessionaire default hereunder, nothing herein is intended nor shall it be deemed to waive, amend, or modify Concessionaire's duty to pay all rents, fees, expenses and other sums due or to become due hereunder.
4. In applying subparagraph 1, 2 or 3 above, reference to "future rentals" or rents "to become due", or "concessionaires obligations hereunder" shall include the MAG specified in Section 7.01A or, if this Lease has been extended, the MAG negotiated for the renewal term years.

**ARTICLE 14**  
**CANCELLATION**

Section 14.01 Events Permitting 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 County and by giving County sixty (60) days advanced written notice:

- 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 more 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 County, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any act or omission of Concessionaire.
- c. The material breach by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same or if such breach cannot be cured within sixty (60) days, County fails to diligently proceed to cure such breach.

Section 14.02 Conditions of Premises at Termination:

Upon termination of this Agreement, Concessionaire shall yield and deliver to COUNTY the Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of COUNTY, reasonable wear and tear, and

damage due to any structural defects or casualty loss not the fault of Concessionaire excepted.

Section 14.03 Events Permitting Cancellation by COUNTY:

A. COUNTY, at its option and in its discretion, may terminate this Agreement upon sixty (60) calendar days' written notice (except rental payments – see subparagraph 1, to-wit: ten (10) days notice for rental payments) and all of its obligations hereunder and may exercise all rights of entry and reentry upon the demised premises, with or without process of law, upon or after the occurrence of any one of the following events:

1. Concessionaire is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after COUNTY has notified Concessionaire in writing that payment was not received when due;
2. Concessionaire files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Concessionaire's property to the extent such termination is permitted by law;
3. Concessionaire makes any general assignment for the benefit of creditors;
4. Concessionaire abandons the Leased Premises for a period of thirty (30) consecutive days;
5. Concessionaire defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Concessionaire, and such default continues for a period of thirty (30) days after receipt of written notice from COUNTY to cure such default, or if such default cannot be cured within thirty (30) days, Concessionaire fails to diligently proceed to cure such default upon receipt of COUNTY's written notice;
6. Concessionaire is adjudged as bankrupt in involuntary bankruptcy procedures;

7. Concessionaire is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Concessionaire where such receivership is not vacated within sixty (60) days after the appointment of such receiver;

B. In any of the aforesaid events, COUNTY may take immediate possession of the Premises including any and all improvements thereon and remove Concessionaire's effects. Concessionaire shall be liable to COUNTY for any costs of cleanup, storage, removal, or disposition of Concessionaire's effects and for restoration of the Premises and for any costs incurred by COUNTY, including without limitation, attorneys' fees in enforcing its rights under this Section 14.03.

C. Failure of COUNTY to declare this Agreement canceled upon the default of Concessionaire for any of the reasons set out shall not operate to bar or destroy the right of COUNTY to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

D. No receipt or acceptance of money by COUNTY from Concessionaire after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which COUNTY's consent is required or operate as a waiver of any right of the COUNTY to retake and resume possession of the Premises.

Section 14.04 Termination for Convenience:

Without limiting the foregoing, COUNTY reserves the right to terminate this Lease Agreement for COUNTY convenience and in its discretion. In such event, COUNTY agrees that it will reimburse Concessionaire the depreciated value of the actual capital and refurbishment costs certified under Article 6, said costs to be depreciated on a straight line basis over one hundred twenty (120) months from the date of such costs. Said payment will be paid within sixty (60) days of the effective

date of termination of this Lease Agreement, subject to offset of any amounts due and owing to COUNTY by Concessionaire. Such amount shall be deemed to be full payment of all amounts due to Concessionaire by COUNTY as a result of such termination for convenience.

Section 14.05 No Consequential Damages

In no event shall the County be liable for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Lease Agreement or termination, for cause or convenience, of this Lease Agreement.

Section 14.06 "Days" defined:

Unless otherwise specified, all reference to "days" in this Article shall mean calendar days.

**ARTICLE 15**  
**GENERAL PROVISIONS**

Section 15.01 Rules and Regulations:

A. Concessionaire shall observe and obey all reasonable and non-discriminatory lawful rules and regulations established, promulgated, and/or adopted consistent with this Agreement from time to time during the term hereof by COUNTY, governing conduct on and operations at the Airport and use of its facilities.

Section 15.02 Compliance with Law:

A. Concessionaire shall not use the Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of county, state government or the U.S. Government, and of any political division or subdivision or

agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

B. At all times during the term of this Agreement, Concessionaire shall, in connection with its activities and operations at the Airport:

1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of County and of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Concessionaire operations and activities under this Agreement.

2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Premises (subject to prior written approval of COUNTY), and Concessionaire's personal property that are required to comply with or conform to any of the above referenced statutes and ordinances, and regulations.

3. Be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of Concessionaire hereunder.

Section 15.03 Nondiscrimination:

Concessionaire, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

B. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of

race, creed, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

C. That Concessionaire shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Concessionaire shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

D. That, in the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate this Agreement.

Section 15.04 Airport Disadvantaged Business Enterprise Program and Requirements:

- (a) 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 enterprise (ACDBE) program. The Lessee 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, or other agreement covered by 49 CFR Part 23. Lessee agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters for operations at the Airport and cause those businesses to similarly include the statement in further agreements, but all such subsequent agreements shall be subject to the provisions of Section 15.03 hereof.

- (b) Lessee **is/is not** an Airport Concession Disadvantaged Business Enterprise as defined in 49 CFR Part 23, Section 23.89. In the event Lessee does not or no longer qualifies as an ACDBE pursuant to federal law and the Airport certification program, Lessee agrees that it will make a good faith effort to purchase services, goods or products from ACDBEs which will equal or exceed the County designated Airport Concessions Disadvantaged Business Enterprise Program goal for airport concessions for each year of the agreement.
- (c) Concessionaire shall provide written quarterly reports on or before the twentieth (20th) day of each reporting month (January, April, July and October of each year) to the Director, contained in Exhibit D as to the participation of ACDBE's in this Agreement. The quarterly reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the entire year. Quarterly reports shall be certified by an officer of Concessionaire as being true and accurate. In the event the ACDBE participation level drops below the established ACDBE participation goal, Concessionaire shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal.
- (d) Each year Lessee no later than February 1<sup>st</sup> shall provide to County the following annual ACDBE information: total gross revenue of the Lessee's business operations at the airport for the last Federal Fiscal Year (October 1 to September 30), the name and address of each non-ACDBE and each certified ACDBE with which it has done business during the past federal fiscal year, a description of the nature of the services performed by and/or items purchased from each business, business contact, ACDBE certification number (if applicable), and the total amount spent with each business.



- (e) Concessionaire agrees that the ACDBE participation in this Agreement shall be at least equal to 1% of anticipated annual gross revenues throughout the Term and any extension thereof.

Section 15.05 Successors And Assigns Bound:

All of the terms, provisions, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the COUNTY and Concessionaire and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 15.06 Subordination to Agreements with U.S. Government:

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the COUNTY and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to COUNTY for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. COUNTY covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

Section 15.07 Non-waiver of Rights:

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated, shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of COUNTY of any of the provisions herein imposed upon Concessionaire.

Section 15.08 Federal Aviation Act, Section 308:

Nothing herein contained shall be deemed to grant to Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act,<sup>1</sup> as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to exclusive possession of the Premises leased to Concessionaire under the provisions of this Agreement.

Section 15.09 Severability:

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 15.10 Headings:

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

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<sup>1</sup> (1) 49 U.S.C. 40103(e), prohibiting the grant of exclusive rights for the use of any landing area or air navigation facility on which Federal funds have been expended (formerly section 308 of the Federal Aviation Act of 1958, as amended).

Section 15.11 Assignment by COUNTY or Other Successor in Interest:

COUNTY may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. COUNTY, airport authority or other successor in interest may assign, pledge or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of bonds or other revenue generating devices.

Section 15.12 Quiet Enjoyment:

COUNTY covenants and agrees that Concessionaire on paying the rent (and other charges herein provided for) and observing and keeping the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Agreement without hindrance or molestation by COUNTY or any person claiming under COUNTY.

Section 15.13 Force Majeure:

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

Section 15.14 Entire Agreement:

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

Section 15.15 Time is of the Essence:

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 15.16 Agreement Made in Wisconsin:

The laws of the State of Wisconsin shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the State courts in Brown County, Wisconsin.

Section 15.17 Cumulative Rights and Remedies:

All rights and remedies of COUNTY and Concessionaire here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by COUNTY and Concessionaire of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy. Notwithstanding the foregoing, neither party shall be liable to the other party for incidental, special, punitive or consequential damages hereunder.

Section 15.18 Interpretation:

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 15.19 Agreement Made in Writing:

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 15.20 Authorization to Enter Agreement:

If Concessionaire signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Concessionaire warrants to COUNTY that Concessionaire is a duly authorized and existing corporation, that Concessionaire has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Concessionaire is authorized to do so. Upon COUNTY's request, Concessionaire will provide evidence satisfactory to COUNTY confirming these representations.

Section 15.21 Approvals:

Wherever approval of COUNTY or Concessionaire is required hereunder, such approval shall not be unreasonably delayed or withheld.

Section 15.22 Intentionally Left Blank:

Section 15.23 Effective Date:

This Agreement shall be effective as of the date of execution on the front page.

Section 15.24 Existing Agreements Terminated:

All agreements between the parties in effect prior to execution of this Agreement and covering the subject matter of this Agreement are terminated as of the effective date of this Agreement.

Section 15.25 Notices:

A. Any notice under the terms of this Agreement shall be in writing and sent by certified mail, return receipt requested, or by overnight courier service. If such notice is given by Concessionaire, it shall be submitted to the Airport Director, Green Bay

Austin Straubel International Airport, 2077 Airport Drive, Ste. 18, Green Bay, WI, 54313, or to such revised address as notified by COUNTY. If given by COUNTY, such notice shall be submitted \_\_\_\_\_.

B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**Section 15.26 Capacity:**

Each party represents to the other that: Such party has full power and authority to perform its obligations hereunder and that any person or entity executing this Agreement by or on behalf of the representing party has the authority to act on behalf of and bind the representing party, and that the performance of this Agreement will not be in violation of the representing party's charter or any law, ordinance, rule, regulation or order of any governmental body having jurisdiction, or the provisions of any agreements to which the representing party is a party or by the terms of which it is bound and, if requested, each party shall furnish to any other party reasonably satisfactory evidence of such authority and approval.

**IN WITNESS WHEREOF**, the parties hereto, through their duly authorized representatives, have executed this Agreement on the day and year first above written.

**COUNTY OF BROWN**

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

Marty Piette, A.A.E.  
Airport Director

\_\_\_\_\_

\_\_\_\_\_  
Please Print name and Title

## EXHIBIT D Utilization of ACDBE Concessions

### Part I

<b>Airport Sponsor</b>	Green Bay International Airport	<b>Location</b>	Green Bay, WI	<b>Terminal Number</b>	
<b>Prime Concession Name</b>		<b>ACDBE? (Yes/No)</b>		<b>Annual Revenue</b>	

*\*Note: If Prime Concession is not a certified ACDBE, please complete Part II which includes all goods and services purchased by Prime Concessionaires.*

### Part II

Quarter	Business Name	Company Address / Email / Phone	ACDBE Certification No	Goods & Services Purchases		Date of Purchase	Contract (Yes/No)
				Non-ACDBE	ACDBE		
1 (Oct - Dec)							
2 (Jan - March)							
3 (April - June)							
4 (July - Sept.)							

<b>ACDBE Contract Requirement</b>	Yes	<b>Totals:</b>	0	0
<b>ACDBE Goal Amount As Per Contract (%)</b>	<b>Non-Car 1.8%</b> (1.0% RC and 0.8% RN) <b>Car 1.72%</b> (1.72% RC and 0.0% RN)			

*\* Form must be submitted to GRB on a quarterly basis pursuant contract requirements.  
 \*\* Examples of existing ACDBE certified businesses providing goods & services*

Airport Terminal Concessions	Car Rental Concessions
Gifts	Oil Service Companies
Advertising Agencies	Advertising Agencies
Insurance Agencies	Insurance Agencies
Office Supplies	Office Supplies
Turf Management & Landscaping	Turf Management & Landscaping
Food Service Suppliers	Tires
News and Reading Materials	Vehicle Driving Aids
Clothing	Vehicle Safety Equipment
Luggage	New Automobiles
Baggage Carts	Auto Parts
Electronics Supplier	Auto Repair
Janitorial Services	Auto Windshield Repair
Security Services	Towing Services
Document Processing	Car Washing/Detail Services
Commercial Printing	Commercial Printing
Payroll Services	Payroll Services
Staffing	Freight Transport