

LEASE NO. DCRA 2016-07

DANE COUNTY, WISCONSIN

AND

MADISON AREA TECHNICAL COLLEGE

STRAUBEL STREET PARKING LOT
LAND AND IMPROVEMENTS

Dane County Regional Airport
Madison, Wisconsin

Lease No. DCRA 2016-07

This Lease is made and entered into by and between Dane County, Wisconsin ("County"), a quasi-municipal corporation and Madison Area Technical College ("Madison College") a technical college district established under Chapter 38 of the Wisconsin Statutes, and shall be effective as of the date it is fully executed by the authorized representatives of both parties.

WITNESSETH:

WHEREAS County owns a parcel of land, located adjacent to the Dane County Regional Airport (the "Airport") and abutting Straubel Street, Madison, Wisconsin, that has been improved as a parking lot with paving, fencing and lighting (the "Premises"), and

WHEREAS Madison College wishes to lease the Premises, including said improvements, from County to be used as a motor vehicle parking lot by individuals using the Madison College Truax Campus facilities, and

WHEREAS County is willing and able to lease the Premises to Madison College according to the terms and conditions set forth below;

NOW, THEREFORE, County and Madison College agree as follows.

1. PREMISES

County hereby leases to Madison College the Premises, consisting of a 88,160 square foot parcel of land adjacent to the Airport, including a driveway providing access to Straubel Street and a parking lot improved with paving, fencing and lighting, as shown on the attached Exhibit A. With the exception of said driveway, the Premises is bounded on four sides with chain link fencing. Madison College accepts the Premises in the condition existing as of the Commencement Date (defined below). Should Madison College desire any inspection report, environmental assessment, survey, drainage report, or any similar study or work performed with respect to the Premises, Madison College shall be responsible for the same at its sole expense.

2. LEASE TERM, RIGHT TO TERMINATE, AND HOLDOVER

The term of this Lease shall be for five years, commencing on July 1, 2017 (hereinafter, the "Commencement Date") and expiring as of 11:59 p.m. on June 30, 2022. Notwithstanding the foregoing, Madison College shall have the right to terminate this Lease, effective any time after June 30, 2019, upon written notice to County specifying a date of termination not less than 60 days after said notice is provided County, and payment to County of a \$5,000 fee no later than the date of termination specified in said notice. In any event, if Madison College fails to surrender the Premises upon termination of the Lease, Madison College shall indemnify and hold County harmless for such hold over, and shall pay all costs, damages, expenses and fees incurred by County as a result of Madison College's continued occupancy of the Premises, and shall pay including rent at 150 percent of the rate applicable on the date of Lease expiration. Acceptance by County of rent after expiration of the term of this Lease shall not result in a renewal or extension of

this Lease or the creation of another lease. The provisions of this section are in addition to and do not affect any other rights provided County by law, equity or contract.

3. RENT

In consideration for the rights granted hereunder Madison College shall pay to County \$4,032 per month for the first 12 months of the term of this Lease. Thereafter, effective as of each anniversary of the Commencement Date, beginning on July 1, 2018, rent payable hereunder shall increase by two percent. Rent shall be paid in advance and is due on or before the first day of each month during the Lease term. Payment of rent shall be by check made payable to County, and shall be paid at the Office of the Airport Director, 4000 International Lane, Madison, Wisconsin 53704, such that it is received by the close of business on the date due. Payments not received when due hereunder shall accrue interest from the due date at the rate of one and one half percent per month, payable on a pro rata per diem basis.

4. IMPROVEMENT AND USE OF PREMISES BY MADISON COLLEGE

Madison College shall have the exclusive right to use the Premises as a motor vehicle parking lot to serve individuals using the Madison College Truax Campus facilities. Use of the Premises shall comply with all applicable laws, covenants and regulations. The Premises shall be used only for the purposes expressly permitted hereunder and Madison College shall not alter or modify the Premises in any manner without the written approval of the Airport Director.

5. LIGHTING, ELECTRIC SERVICE, AND OTHER UTILITIES

Electric service for lighting purposes is the only utility service supplied to the Premises. The cost of electric service for the Premises, set at \$75 per month for purposes of this Lease, is included in the rent established in Section 3 above. Within four months of the Commencement Date, County shall replace the lighting heads on the existing light poles on the Premises with seven LED lamped fixtures appropriate for parking lot illumination purposes, and each rated at 12,363 lumens. County shall have the right, without cost to Madison College and without payment to Madison College for any inconvenience, to install and maintain in, on or across the Premises, sewer, water, gas, electric and telephone lines, navigation aids, or other installations and equipment, including cable, wire and fiber, necessary or beneficial to the operation of the Airport or to service tenants of County. County shall to the extent feasible carry out such work and locate any above-ground structure or installation so as not to unreasonably interfere with Madison College's use of the Premises. If, during the term of this Agreement, metering is installed that permits discrete billing for electric service provided to the Premises, Madison College shall arrange to be directly billed for such services by the provider and shall timely pay for the services as billed. Upon such billing and payment, the rent hereunder shall be reduced by \$75 per month.

6. MAINTENANCE

During the term of this Lease, Madison College shall be responsible for all care and maintenance of the Premises, including the improvements, trees and plantings thereon, and shall at all times keep the Premises, and all improvements, trees and plantings on the

Premises, in safe, clean, and orderly condition and appearance. Madison College shall remove snow and ice from the Premises as needed to comply with its maintenance obligations hereunder, and shall mow the grass as needed on the islands in the parking lot, the terrace outside the fence abutting Straubel Street, and outside the fence to the east and west of the Premises to a distance of ten feet from the fence. Upon expiration of this Lease, the Premises shall be surrendered to County in the condition existing on the Commencement Date, normal wear and tear excepted.

7. INDEMNIFICATION AND INSURANCE

A. INDEMNITY

Madison College shall, to the extent permitted by law, fully indemnify and hold harmless County from and against all claims, judgments, fines, damages, penalties, actions and expenses, including reasonable attorneys' fees and costs, related to or arising out of the use, occupancy, or maintenance of the Premises by Madison College, its agents, employees, invitees, permittees or contractors. Madison College's obligation of indemnification, as set forth herein, shall not apply to damages or liability caused by the acts or omissions of County. Nothing in this section is intended or shall be construed as a waiver of defenses and immunities (including the limitations of Section 893.80, Wisconsin Statutes) available under the law to the parties to this Lease.

B. LIABILITY INSURANCE

Madison College shall, upon execution of this Lease, obtain and maintain in full force and effect Comprehensive General Liability Insurance for bodily injuries or death resulting from accident or other cause, in a minimum sum of \$3,000,000 per occurrence for bodily injury and, in addition, shall obtain and maintain in full force and effect Comprehensive Property Damage Liability Insurance in a minimum sum of \$3,000,000 for property damage arising from any one accident or other cause. Insurance so provided shall be deemed Primary. Madison College shall maintain said insurance with one or more insurance companies licensed by the Wisconsin Office of the Commissioner of Insurance. The deductible for any insurance policy required under this Lease shall not exceed \$5,000. Madison College shall by contract require any sublessee of the Premises or any part thereof to obtain and maintain liability insurance as is required of Madison College hereunder. All insurance policies required under this Lease, including those of any sublessees, shall name County as an additional insured and shall contain a provision that the insurer shall send to County written notice of cancellation or any material change in said policies at least 30 days in advance of the effective date of the change or cancellation. Upon the request of County, Madison College shall furnish County with certificates of insurance showing that the liability insurance required hereunder is maintained through termination of this Lease.

C. MODIFICATION OF INSURANCE REQUIREMENTS

The foregoing insurance requirements may be modified only upon the written approval of County.

D. USE OF INSURANCE PROCEEDS

Proceeds of any liability or property insurance required under this Lease shall be applied toward extinguishing, satisfying or remedying the liability, loss or damage underlying the payment of the insurance proceeds.

8. TAXES AND CHARGES

Madison College shall pay as they become due any and all taxes, fees, assessments or charges of any type levied by any governmental entity based upon, related to, or resulting from any improvements, conditions, property, use, activities or operations of any kind on the Premises. Madison College shall have the right at its own cost and expense to contest the amount or validity of any tax, fee, assessment or charge and to bring or defend any actions involving the amount or validity thereof in its own name or, if necessary and approved by County, in the name of County; provided that, if unsuccessful, Madison College shall pay and discharge any such tax, fee, assessment or charge so contested, together with any penalties, fines, interest, costs and expenses, including reasonable attorneys' fees, that may result from any such action by Madison College, and provided that, pending resolution of any proceeding contesting a tax, fee, assessment or charge, Madison College shall take any actions necessary, including conditional payment of the amount in dispute, to prevent the attachment or accrual of any lien or penalty.

9. COMPLIANCE WITH RULES, REGULATIONS AND LAWS

Madison College and all persons operating under the rights granted under this Lease shall observe and obey all rules, regulations, directives and minimum standards with respect to the use of the Premises which have been or may in the future be reasonably issued by the Airport Director, and shall further abide by all federal, state and local laws, regulations, ordinances, rules, and agency orders now in effect or as hereafter amended, approved or adopted.

10. ENVIRONMENTAL PROTECTION

A. COMPLIANCE

Madison College, at its own expense, shall ensure that Madison College and Madison College's agents, employees, invitees, permittees and contractors comply with any present and hereafter enacted or amended Environmental Law affecting activities on the Premises. Madison College shall not cause or permit any material or substance designated by the United States Environmental Protection Agency as an "Extremely Hazardous Substance" or "Toxic Chemical" to be used, generated, manufactured, produced or stored on the Premises, Released from the Premises, or transported to or from the Premises. Madison College shall promptly notify County of any action or condition that is contrary to any provision of this section. As used in this Lease, "Environmental Law" means any and all laws, rules, regulations, regulatory agency guidance provisions and policies, ordinances, applicable court decisions, and airport guidance documents, directives, policies (whether enacted by any local, state or federal governmental authority, or reasonably issued by the Airport Director) now in effect or hereafter enacted or issued that deal with the regulation or protection of the environment (including, but not limited to, air, water, soil and subsurface elements), or with the

generation, handling, storage, disposal or use of chemicals or substances that could be detrimental to health, public welfare or the environment. The term "Release" or "Released" as used herein shall be interpreted broadly to include any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing, and actions of similar nature, including without limitation, the moving of any substance or material through, into or upon land, soil, surface water, ground water, or air.

B. INDEMNITY

Madison College shall, to the extent permitted by law, indemnify, defend and hold harmless County from and against any and all liability, loss, damage, expense, penalties and costs (including legal fees and all costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work) arising from or related to any proceeding, action, allegation or claim of liability for injury, death, or damage to persons or property and any and all proceedings, actions or claims brought by any individual, entity, or governmental authority, alleging or arising in connection with (i) contamination of, or adverse effects on the environment (whether known, alleged, potential, or threatened), or (ii) alleged or potential violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity, which proceeding, claim or action is brought as a result (whether in part or in whole) of any activity or operation on or Release from the Premises caused by Madison College, its agents, employees, invitees, permittees or contractors during the term of this Lease. Madison College's obligations and liabilities under this paragraph shall continue so long as County bears any liability or responsibility under any Environmental Law for any activity or operation on or Release from the Premises caused by Madison College, its agents, employees, invitees, permittees or contractors. County's right to indemnification hereunder shall not be in limitation or exclusion of any other rights and remedies provided by law. Nothing in this section is intended or shall be construed as a waiver of defenses and immunities (including the limitations of Section 893.80, Wisconsin Statutes) available under the law to the parties to this Lease.

11. DISCRIMINATION PROHIBITED

Madison College, for itself, its representatives, successors and assigns, does hereby covenant and agree that (a) no person on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises or any improvement thereon; (b) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be subjected to discrimination on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States; (c) that the Madison College 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, Office of the Secretary, Part 21,

Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended; and (d) that Madison College shall provide access to the Premises for the physically disabled as required by all applicable federal, state and local laws and regulations. Breach of the provisions herein prohibiting discrimination shall be material and grounds for immediate termination of this Lease.

12. SUPERIOR RIGHTS

The provisions of this Lease shall be subject and subordinate to any agreement hereafter entered into between the County and the United States or the State of Wisconsin affecting regulation, operation, use, or maintenance of the Airport, provided County's execution of such agreement is a condition precedent to the acquisition of Airport property, or the expenditure of federal or state funds for the development or maintenance of Airport property or operations. If required by the United States or State of Wisconsin, this Lease shall be amended to reflect the terms of any such agreement.

13. AIRPORT PROTECTION CLAUSE

County reserves and Madison College hereby grants for the benefit of the public, as well as County, the right to pursue all operations of the Airport, including the right of aircraft to fly in the airspace overlying the Premises and to cause such noise and vibration as may be inherent in the operation of aircraft on or in the vicinity of an active airport. Madison College shall not use or permit the use of the Premises in any manner that causes or creates interference with communication between the Airport and aircraft, difficulty in distinguishing Airport lights and markers, interference with visibility between aircraft and the Airport, conditions that attract birds or other wildlife that may pose hazards to aviation, or other hazards to the operation of aircraft at or in the vicinity of the Airport. Madison College shall restrict the height of objects of any kind on the premises to a height that is in compliance with Federal Aviation Regulations, Part 77. County reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to remove, or prevent Madison College from constructing, keeping or placing, or permitting to be constructed, kept or placed, any object, material, device or equipment on the Premises which County's Airport Director determines would limit the usefulness of the Airport, or constitute a hazard to aviation or violation of FAA directive or regulation. Activities on the Premises involving the production of smoke or otherwise affecting visibility in the area shall be approved in advance by the Airport Director or the Director's designee and are at any time subject to prohibition or suspension to ensure that such activities do not in any manner interfere with aircraft operations or safety.

14. ASSIGNMENT

While not in default of any provision of this Lease, Madison College may assign rights held hereunder upon the payment to County of an assignment fee of \$500 and the prior written approval of County, which approval shall not be unreasonably withheld.

15. DEFAULT BY MADISON COLLEGE AND COUNTY'S REMEDIES

A. MADISON COLLEGE SHALL BE DEEMED IN MATERIAL BREACH OF THIS LEASE UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(1) The failure of Madison College to pay when due any rent payable pursuant to this Lease, if such failure remains unremedied for a period of 10 days after written notice thereof from County;

(2) Madison College's default in the observation or performance of any covenant or obligation hereunder, other than its obligation to timely pay rent, and the failure of Madison College to remedy such default for a period of 45 days after receipt of written demand from County to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand. If Madison College commences, within the foregoing 45 day period, bona fide corrective action with respect to said default and is diligently pursuing the same, the deadline by which the default must be remedied shall be extended, by not more than 10 days, to allow reasonably sufficient time for Madison College to correct the default;

(3) The commencement by or against Madison College, as a debtor, of a proceeding under the Bankruptcy Code or any other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding under any federal, state or foreign law, and such proceeding is not dismissed with prejudice within 60 days of such filing;

(4) Madison College makes a general assignment for the benefit of creditors or applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or other custodian for Madison College or the property of Madison College or any part thereof, or in the absence of such application, consent, or acquiescence, a trustee, receiver or other custodian is appointed for Madison College or the property of Madison College or any part thereof, and such appointment is not discharged within 60 days;

(5) The commencement of an action against Madison College to foreclose any lien or mortgage or other rights of Madison College in or to the Premises; or

(6) The abandonment by Madison College of the Premises, except in connection with its surrender thereof to an approved assignee.

B. COUNTY'S REMEDIES UPON MATERIAL BREACH BY MADISON COLLEGE

Upon material breach by Madison College as set forth above County may give Madison College written notice of its intention to terminate this Lease, which termination shall be effective on the date set forth in the notice. Upon such termination Madison College's rights, including the rights of any sublessee, to possession of the Premises shall cease. Any termination under this section must be expressly noticed as set forth herein, and neither notice to pay rent or to deliver up possession of the Premises given pursuant to law, nor any proceeding instituted by County, nor the failure by Madison College for any period of time to pay any of the rent herein reserved, shall of itself operate to terminate this Lease. Any lease of office or other space on or in any improvement constructed or placed on the Premises shall provide for termination thereof in the event County terminates this Lease pursuant to this subsection 15B. All personal property on the

Premises after termination of this Lease shall be deemed abandoned by Madison College and subject to removal by County. Madison College shall save County harmless and reimburse County for any costs, loss or damages occasioned by the removal of personal property as authorized under this Lease.

16. DEFAULT BY COUNTY AND MADISON COLLEGE'S REMEDIES

A. COUNTY SHALL BE DEEMED IN MATERIAL BREACH OF THIS LEASE UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(1) Madison College is for a period of 30 consecutive days unable to use the Premises because of any law, rule, regulation or other action or failure to act on the part of any governmental authority having jurisdiction over the Premises or the Airport, provided the inability to use the Premises is not due to an act or omission of Madison College, its representatives, successors and assigns, and is within the control of County;

(2) County's default in the observation or performance of any covenant or obligation hereunder and the failure of County to remedy such default for a period of 45 days after receipt of written demand from Madison College to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand. If County commences, within the foregoing 45 day period, corrective action with respect to said default and is diligently pursuing the same, the deadline by which the default must be remedied shall be extended, by not more than 10 days, to allow reasonably sufficient time for County to correct the default.

B. MADISON COLLEGE'S REMEDIES UPON MATERIAL BREACH BY COUNTY

Upon material breach by County as set forth above, Madison College may give County written notice of its intention to terminate this Lease, which termination shall be effective 30 days after delivery of said notice. Provided, however, that the notice of intent to terminate shall be of no force or effect if County shall have remedied the breach prior to County's actual receipt of said notice.

17. REMEDIES CUMULATIVE, NO IMPLIED WAIVER

All rights and remedies of County and Madison College contained in this Lease, or based in law or equity shall be construed to be cumulative, and no such right or remedy shall be exclusive of any other unless so stated herein. No waiver of any default or breach of this Lease shall be implied from any acceptance by County of any rent or other payments due hereunder or any omission by County to take any action on account of such default or breach if such default or breach persists or is repeated, and no express waiver shall be effective in a manner other than as expressly specified in said waiver. The consent or approval by County to or of any act by Madison College requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent or approval to or of any subsequent similar acts by Madison College. No waiver by Madison College of County's default or breach of any of its obligations hereunder shall be construed to be or act as a waiver by Madison College of any subsequent default or breach by County.

18. ENTRY UPON PREMISES

County may enter upon the Premises at any reasonable time, for any purpose necessary, incidental to or connected with the exercise of its governmental functions, or to inspect the Premises for compliance with all applicable laws, rules, regulations and covenants hereunder or to prevent waste, loss or destruction.

19. SUCCESSORS AND ASSIGNS BOUND

All the terms, covenants and conditions of this Lease shall extend to and bind the successors and assigns of the parties hereto.

20. SEVERABILITY

If any term or condition of this Lease shall be deemed to be invalid or unenforceable, all other terms and conditions shall remain in full force and effect.

21. LAWS, VENUE, AMENDMENT, ENTIRE AGREEMENT

This Lease shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin with venue of any judicial dispute in Dane County Circuit Court. This Lease shall not be construed more strictly as to either party on the basis of which party is more responsible for its preparation. The Airport Director is authorized to approve and execute on behalf of County any modification or amendment of this Lease. All terms and conditions agreed upon by the undersigned parties with respect to the subject matter of this Lease are contained herein, and each party specifically acknowledges by its execution of this Lease that it has not relied on any verbal promise, representation or warranty made by the other party, its employees or agents with respect to this Lease or any of the matters and rights addressed herein.

22. NOTICES

Except as provided below with respect to emergencies, notice to either party shall be sufficiently served if it is in writing and is physically delivered or delivered by certified mail to the party at its address as set forth below, or to such other address as may be provided by the party in writing from time to time.

County:
Airport Director
Dane County Regional Airport
4000 International Lane
Madison, WI 53704-3120

Madison College:
Director of Facilities Services
Madison Area Technical College
1701 Wright Street
Madison, WI 53704-2599

Madison College shall provide to County, in writing, the name, address and telephone number(s) of a representative of Madison College that County can contact, 24 hours per day, seven days a week, in the event of an emergency, which individual shall be authorized to act on behalf of Madison College.

23. TIME IS OF THE ESSENCE

Time is of the essence in performance under this Lease.

24. FORCE MAJEURE

Force Majeure shall mean occurrences caused by or resulting from an Act of God, severe weather conditions, war, insurrection, riot, civil commotion, fire or other casualty, strikes, lockouts, inability to obtain labor or materials, or other causes beyond a party's reasonable control. Neither party shall have any liability whatsoever to the other party on account of any event of Force Majeure. If this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay caused by any event of Force Majeure. However, an event of Force Majeure shall not in any way affect Madison College's obligation to pay rent or other moneys due, nor shall it extend the term of this Lease.

25. PROPERTY RIGHTS RESERVED

All rights granted Madison College under this Lease are subject and subordinate to the terms and conditions of the instruments under which County has acquired and improved the Airport.


26. COUNTERPARTS AND COPIES

The parties may evidence their agreement to be bound by the terms of this Lease upon one or several counterparts of this instrument, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Lease shall have the same effect for all purposes as an original.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties have below executed this Lease on the dates indicated.

FOR MADISON AREA TECHNICAL COLLEGE:

By: _____  Date: 4.11.17
Mark Thomas
CFO/VP of Administrative Services

FOR DANE COUNTY:

By: _____ Date: _____
Joe Parisi
County Executive

By: _____ Date: _____
Scott McDonell
County Clerk



Premises Parcel



EXHIBIT A