

# CONTRACT COVERSHEET

NOTE: Shaded areas are for County Executive review.

Res 115  
Significant

DEPARTMENT <b>Airport</b>	CONTRACT/ADDENDUM #: <b>11998</b>																											
1. This contract, grant or addendum: <input type="checkbox"/> AWARDS <input checked="" type="checkbox"/> ACCEPTS	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">Contract</td> <td style="width: 40%; text-align: center;">If Addendum, please include original contract number</td> <td style="width: 30%; text-align: center;">Addendum</td> </tr> <tr> <td style="text-align: center;">↓</td> <td></td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">POS</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Co Lesse</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;">Co Lessor</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Intergovernmental</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Purchase of Property</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Property Sale</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Other:</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Contract	If Addendum, please include original contract number	Addendum	↓		↓	<input type="checkbox"/>	POS	<input type="checkbox"/>	<input type="checkbox"/>	Co Lesse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Co Lessor	<input type="checkbox"/>	<input type="checkbox"/>	Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/>	Purchase of Property	<input type="checkbox"/>	<input type="checkbox"/>	Property Sale	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>
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<input type="checkbox"/>	Other:	<input type="checkbox"/>																										
2. This contract is discretionary <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																												
3. Term of Contract or Addendum: From: <u>07/01/2014</u> To: <u>03/31/2033</u>																												
4. Amount of Contract or Addendum <b>\$2,375.64 per month</b>																												
5. Purpose: Lessee seeks to lease a parcel of land for expansion of its Fire Protection Training Facility and the installation of signage on the northwest corner of Anderson and Pearson Street, adjacent to the airport.																												
6. Vendor or Funding Source: <b>Madison Area Technical College</b>																												
7. MUNIS Vendor Code: <b>5012</b>																												
8. Bid/RFP Number:																												
9. If grant: Funds Positions? <input type="checkbox"/> YES <input type="checkbox"/> NO      Will require on-going or matching funds? <input type="checkbox"/> YES <input type="checkbox"/> NO																												
10. Are funds included in the budget? <input type="checkbox"/> YES <input type="checkbox"/> NO																												
11. Account No. & Amount, Org. & Obj. <u>AIRINDUS 83425</u>	Amount \$ <u>2,375.64</u>																											
Account No. & Amount, Org. & Obj. _____	Amount \$ <u>(approx \$534,500)</u>																											
Account No. & Amount, Org. & Obj. _____	Amount \$ _____																											
12. Is a resolution needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO      If "YES," please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption <u>Res. 115, 2014-2015 (attached)</u>																												
13. Does Domestic Partner equal benefits requirement apply? <input type="checkbox"/> YES <input type="checkbox"/> NO																												
14. Director's Approval																												

### CONTRACT REVIEW/APPROVALS

Initials	Ftnt	Date In	Date Out
<u>MA</u> Received	_____	<u>6-10-14</u>	_____
<u>CA</u> Controller	_____	<u>6-12-14</u>	<u>6-12-14</u>
<u>JA</u> Corporation Counsel	_____	<u>6-12-14</u>	<u>6-12-14</u>
<u>TR</u> Risk Management	_____	<u>6/12/14</u>	<u>6/12/14</u>
<u>VA</u> ADA Coordinator	_____	<u>6/12/14</u>	<u>6/12/14</u>
<u>CA</u> Purchasing Agent	_____	_____	<u>6-12-14</u>
_____ County Executive	_____	_____	_____

### VENDOR

Vendor Name & Address <b>Madison Area Technical College</b>
Contact Person <b>Mike Stark, Dir Facility Services</b>
Phone No. <b>246-6737</b>
E-mail Address

**Footnotes:**

1. \_\_\_\_\_
2. \_\_\_\_\_

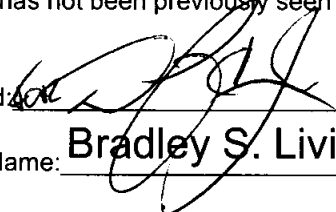
<b>Return To:</b> Name/Title: <u>Kimberly S. Jones</u> Dept.: <u>Airport</u>
Phone: <u>246-3391</u> Mail Address: <u>4000 International Lane</u>
E-mail: <u>jones.kimberly@msnairport.com</u> <u>Madison, WI 53704</u>

**CERTIFICATION**

The attached contract: *(Check as many as apply)*

- conforms to Dane County's standard Purchase of Services Agreement form in all respects
- conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
- is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy<sup>1</sup>

Date: June 10, 2014

Signed:   
Print Name: Bradley S. Livingston

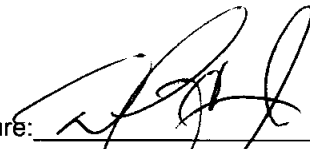
Telephone Number: 246-3380

Print Name: Bradley S. Livingston

**MAJOR CONTRACTS REVIEW (DCO Sect. 25.20)** This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

**EXECUTIVE SUMMARY** *(Attach additional pages, if needed).*


1. **Department Head**  Contract is in the best interest of the County.  
Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: 10 JUN 14 Signature: 

2. **Director of Administration**  Contract is in the best interest of the County.  
Comments:

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

3. **Corporation Counsel**  Contract is in the best interest of the County.  
Comments:

Date: 6/12/14 Signature: 

<sup>1</sup>A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract by means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

LEASE NO. DCRA 2014-03

DANE COUNTY, WISCONSIN

AND

MADISON AREA TECHNICAL COLLEGE

LAND LEASE

FIRE TRAINING FACILITY

Dane County Regional Airport

Madison, Wisconsin

## Lease No. DCRA 2014-03

This Lease is made and entered into by and between Dane County, Wisconsin, a quasi-municipal corporation (hereinafter, "Lessor") and the Madison Area Technical College (hereinafter, "Lessee") and shall be effective as of the date it is fully executed by the authorized representatives of both parties.

### WITNESSETH:

**WHEREAS** Lessor is the owner of the Dane County Regional Airport and certain adjacent properties (hereinafter, the "Airport") in Madison, Wisconsin; and

**WHEREAS** Lessee desires to lease certain premises located on Airport property, and to obtain certain rights in connection therewith, more fully described hereinafter, for the purpose of constructing and utilizing a fire protection training facility; and

**WHEREAS** Lessor deems it advantageous to itself and to the operation and development of the Airport to lease to Lessee the premises described below, upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration for the rights and obligations herein accruing to the parties, the sufficiency of which is acknowledged by each party, Lessor and Lessee agree as follows:

#### 1. PREMISES

Lessor hereby lets and demises to Lessee, subject to existing easements and right of ways, a 109,645 square foot parcel of land (hereinafter, the "Premises") situated adjacent to the Airport, as shown and described in the attached Exhibit A. Lessee accepts the Premises in the condition existing as of the effective date of this Lease, with no warranty or representation by Lessor, express or implied, of any kind, relating whatsoever to the condition of the Premises or its suitability for use as intended by Lessee. Should Lessee desire any inspection report, environmental assessment, survey, drainage report, or any similar study or work performed with respect to the Premises, Lessee shall be responsible for the same at Lessee's sole expense.

#### 2. LEASE TERM AND HOLDOVER

The term of this Lease shall commence on July 1, 2014 (hereinafter, the "Commencement Date") and expire and terminate as of 11:59 p.m. on March 31, 2033. If Lessee holds over after the termination of this Lease without the express written consent of Lessor, Lessee shall become a Lessee at sufferance only, at a rental rate equal to 200% of the rent in effect upon the date of the termination of the Lease, and shall be subject to the terms, covenants and conditions of this Lease. Acceptance by Lessor of rent after such termination shall not result in a renewal or extension of this Lease. The provisions of this section are in addition to and do not affect any other rights provided Lessor by law, equity or contract. If Lessee fails to surrender the Premises upon termination of the Lease, Lessee shall indemnify and

hold Lessor harmless from all claims, actions, and judgments asserted or entered against Lessor due to Lessee's hold over, and shall pay all expenses and fees incurred by Lessor as a result of Lessee's continued occupancy of the Premises.

### 3. RENT

In consideration for the rights granted hereunder Lessee shall pay during the first year of the term of this Lease rent in the amount of \$0.26 per annum for each square foot of the Premises in 12 monthly installments of \$2,375.64. Notwithstanding the foregoing, rent due for the first year of the term of this Lease shall be modified in the event regulations applicable to the Premises result in a different proportionment of the Fully Developable, Setback, and Surplus lands comprising the Premises than the proportionment utilized by John Rolling at page 22 of his July 19, 2013 appraisal of the Premises. Rent modification under the foregoing sentence shall be based on a recalculation of the fee land value of the Premises based only upon different setback requirements than those assumed in said appraisal report. The amount of rent to be paid by Lessee subsequent to the first year of the Lease term shall be adjusted annually as set forth hereunder. 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 of Dane, Wisconsin, 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.

### 4. ANNUAL RENT ADJUSTMENT

Rent due hereunder shall be adjusted effective on the first anniversary of the Commencement Date and every year thereafter, based on changes in the Consumer Price Index, U.S. City Average, All Items, all Urban Consumers (hereinafter, the "CPI"), provided that in no event shall the annual rent for a Lease year be lower than the rate established for the prior Lease year. Said adjustment establishing each new annual rent rate shall be calculated using the following formula:

New Annual Rate =

$$\text{Current Annual Rate} \times \frac{\text{CPI Index for December of most recent year}}{\text{CPI Index for December of next most recent year}}$$

For example:

Rate for the 2015-2016 lease year hereunder =

$$\text{Rate for 2014-2015 lease year} \times \frac{\text{CPI Index for December of 2014}}{\text{CPI Index for December of 2013}}$$

As adjusted, the annual rate shall be paid in 12 equal monthly installments due as set forth above. In the event publication of the CPI is terminated, or its method of calculation is significantly altered, then such periodic adjustment shall be made by application of the index that, in Lessor's reasonable discretion, is the index most

commonly used in the aviation industry or, if there is no such standard, in the rental industry generally. If the commencement or termination of this lease falls on a date other than the first or last day of a calendar month, respectively, applicable rent for that month shall be paid pro-rata according to the number of days in such month during which this Lease is effective.

#### **5. IMPROVEMENT AND USE OF PREMISES BY LESSEE**

Lessee shall have the right to construct and utilize fire training facilities and associated improvements on the Premises. Said improvements and facilities shall be as shown on Exhibit B, attached hereto, and shall not differ materially from the design approved on July 17, 2013 by the City of Madison Urban Design Committee (hereinafter, the "UDC"), as said design is shown on Lessee's submittal for final UDC approval consisting of a cover sheet and 28 sheets of plans and drawings, said plans and drawings being fully incorporated into this Lease. Lessee may conduct demolition, and construct or install improvements on the Premises, and on the adjacent leasehold associated with Lease No. DCRA 86-16, in addition to or materially different from those shown on Exhibit B and the aforesaid UDC approved submittals only upon receipt of prior written approval from the Airport Director or the Director's designee. Lessee understands and acknowledges that further improvements proposed for construction or installation on the Premises or the adjacent leasehold associated with Lease No. DCRA 86-16 will not be approved by Lessor if the proposed improvements or uses thereof are deemed by the Airport or the Federal Aviation Administration (hereinafter, the "FAA") to be incompatible with Airport operations. Prior to commencing construction activities on the Premises, Lessee shall file with the FAA a complete and accurate FAA Form 7460-1. Use of the Leased Premises and construction of improvements thereon may not proceed or be maintained by Lessee unless the FAA determines that the improvements proposed for the Premises would not be a hazard to air navigation. If the FAA's determination of no hazard to air navigation is conditional, Lessee shall satisfy all conditions underlying the determination. All improvements, alterations or fixtures constructed or installed on the Premises shall comply with local building codes and all other applicable laws, covenants and regulations. Approval by Lessor shall not constitute an opinion or warranty that any items or conditions so approved are in compliance with applicable codes, laws, covenants or regulations. The Leased Premises are not to be used in any manner other than that expressly authorized herein.

#### **6. OWNERSHIP OF IMPROVEMENTS AT LEASE TERMINATION**

All improvements on the Premises upon termination of this Lease shall become the property of Lessor. Prior to or immediately upon Lease termination, Lessee shall execute all documents necessary to effectuate the transfer to Lessor of ownership of the improvements on the Premises free and clear of all liens and encumbrances. In the alternative, and at Lessor's sole discretion, Lessor may require the demolition and removal, by Lessee and at Lessee's expense, of all or some of the improvements on the Premises. In the event demolition and removal of improvements is required by Lessor, all demolition and removal shall be fully completed by Lease termination and Lessee shall upon Lease termination peaceably surrender possession of the Premises to Lessor in its pre-improvement condition.

## **7. LEASEHOLD MORTGAGE**

Lessor shall consent to a mortgage or deed of trust on Lessee's leasehold interest hereunder granted to a lending institution to secure a loan, the proceeds of which will be used entirely to pay for the construction of improvements on the Premises, provided that the language of such mortgage or deed of trust and of all related documents that require the execution, approval, or consent of Lessor shall be subject to the prior review and approval of legal counsel for Lessor, and that all reasonable legal fees incurred by Lessor in connection with such review and approval shall be paid by Lessee. In no event shall the land comprising the Premises be subject to mortgage or otherwise encumbered as security for any obligation of Lessee.

## **8. MECHANICS' LIENS AND PAYMENT BOND**

Lessee shall promptly pay for all labor and materials supplied in connection with any improvement on the Premises and shall obtain waivers of liens for labor, material and equipment from contractors and suppliers as a condition of payment. Lessee shall indemnify and hold Lessor harmless from the imposition of any liens imposed against the Premises or Lessee's interest therein as a result of any action or inaction by Lessee or Lessee's employees, agents, or contractors. In the event that a lien is recorded against the Premises as a result of an act or omission of the foregoing type, Lessee shall cause the lien to be removed within 15 days of notice to Lessee of the lien. If Lessee fails to timely remove the lien, Lessor may, but shall not be obligated to, cause the removal of the lien. Lessee shall reimburse Lessor for all costs and fees incurred by Lessor in the removal of the lien, including attorneys' fees and costs, within 15 days of receipt of notice from Lessor of such fees, costs or expenses.

## **9. UTILITIES**

Lessee shall provide for its own connections with utilities necessary or convenient for its use of the Premises and shall make its own arrangements with the entities providing such utilities. Lessee shall pay for all utility service supplied to the Premises and for any necessary metering devices or other installations, including cable, wire and fiber, related to the provision of such services. Upon termination of this Lease, Lessee shall, if so requested by Lessor, remove all installations related to the provision of utility services placed on or beneath the surface of the Premises during the term of this Lease. Lessor shall have the right, without cost to Lessee and without reimbursement to Lessee 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 other tenants of Lessor. Lessor shall to the extent feasible carry out such work and locate any above-ground structure or installation so as not to unreasonably interfere with Lessee's use of the Premises.

## **10. REPAIR AND MAINTENANCE**

Lessee shall, at no expense to Lessor, maintain and repair the Premises and all improvements located thereon and shall keep the same in a neat, clean, and safe condition.

## **11. INDEMNIFICATION AND INSURANCE**

### **A. INDEMNITY**

Lessee shall, to the extent permitted by law, fully indemnify and hold harmless Lessor from and against all claims, judgments, fines, damages, penalties, actions and expenses, including reasonable attorneys' fees incidental to the investigation and defense thereof, related to or arising out of the use, occupancy, or maintenance of the Premises by Lessee, its agents, employees, sublessees or contractors. Lessee's obligation of indemnification, as set forth herein, shall not apply to damages or liability caused by the acts or omissions of Lessor. 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**

Lessee 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. Lessee shall maintain said insurance with one or more insurance companies licensed by the Wisconsin Office of the Commissioner of Insurance. Lessee shall by contract require any sublessee of the Premises or any part thereof to obtain and maintain liability insurance as is required of Lessee hereunder. All insurance policies required under this Lease, including those of any sublessees, shall name Lessor as an additional insured and shall contain a provision that the insurer shall send to Lessor 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 Lessor, Lessee shall furnish Lessor with certificates of insurance showing that the liability insurance required hereunder is maintained through termination of this Lease.

### **C. PROPERTY INSURANCE**

Lessee shall, upon execution of this Lease, obtain and maintain in full force and effect insurance against loss or damage to all improvements on the Premises, covering all risks of damage or loss. The amount of such insurance shall be at least equal to the replacement value of the improvements on the Premises, as determined by an appraiser or insurer approved by Lessor, with no coinsurance penalty provision. Policies for the property insurance required hereunder shall contain a provision that



Lessee's insurer shall send to Lessor 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 Lessor, Lessee shall furnish Lessor with certificates of insurance showing that the property insurance required hereunder is maintained through termination of this Lease.

**D. DEDUCTIBLE**

The deductible for any insurance policy required under this Lease shall not exceed \$5,000.

**E. MODIFICATION OF INSURANCE REQUIREMENTS**

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

**F. 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.

**12. TAXES AND CHARGES**

Lessee 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. Lessee 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 Lessor, in the name of Lessor; provided that, if unsuccessful, Lessee 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 Lessee, and provided that, pending resolution of any proceeding contesting a tax, fee, assessment or charge, Lessee shall take any actions necessary, including conditional payment of the amount in dispute, to prevent the attachment or accrual of any lien or penalty.

**13. COMPLIANCE WITH RULES, REGULATIONS AND LAWS**

Lessee 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.

## **14. ENVIRONMENTAL PROTECTION**

### **A. COMPLIANCE**

Lessee, at its own expense, shall ensure that Lessee and Lessee's agents, employees, contractors, invitees, sublessees, and any third party permitted by Lessee to use the Premises comply with any present and hereafter enacted or amended Environmental Law affecting Lessee's activities on the Premises. Lessee 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. Lessee shall promptly notify Lessor 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 use 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. Notwithstanding the foregoing, Lessee shall have the right to bring onto the Premises, store and utilize reasonable quantities of fuel, oil and other petroleum products, solvents, cleaning supplies, and other substances and compounds in its permitted use of the Premises and in the conduct of its authorized operations on the Premises, provided the storage and use of any and all such substances and materials shall at all times conform to the requirements of law.

### **B. INDEMNITY**

Lessee shall, to the extent permitted by law, indemnify, defend and hold harmless Lessor 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 party 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 in whole or in part by any person or entity other than Lessor) during the term of this Lease. Lessee's obligations and liabilities under this paragraph shall continue so long

as Lessor bears any liability or responsibility under any Environmental Law for any occurrence on the Premises. Lessor'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.

#### **15. DISCRIMINATION PROHIBITED**

Lessee, 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 Lessee 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 Lessee 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.

#### **16. SUPERIOR RIGHTS**

The provisions of this Lease shall be subject and subordinate to any agreement hereafter entered into between the Lessor and the United States or the State of Wisconsin affecting regulation, operation, use, or maintenance of the Airport, provided Lessor'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. If required by the United States or State of Wisconsin, this Lease shall be amended to reflect the terms of any such agreement.

#### **17. AIRPORT PROTECTION CLAUSE**

Lessor reserves and Lessee hereby grants for the benefit of the public, as well as Lessor, 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. Lessee 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. Lessee shall restrict the height of structures and objects of any kind on the premises to a height that is in compliance with Federal Aviation Regulations, Part 77. Lessor 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 Lessee from constructing, keeping or placing, or permitting to be constructed, kept or placed, any building, structure, plantings, object, material, device or equipment on the Premises which Lessor'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.

#### **18. ASSIGNMENT**

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

#### **19. LESSOR'S RIGHT TO USE OF PREMISES AND TRAINING**

Lessor shall have the right, upon reasonable notification to Lessee, to access the Premises and use the facilities and equipment thereon to conduct fire fighting training for Airport Crash, Fire and Rescue personnel. Further, Lessee shall, without charge, provide training and instruction to Airport Crash, Fire and Rescue personnel on the Premises and at Madison Area Technical College under the same terms as contained in the Operating Agreement attached to Lease No. DCRA 86-16, also executed by the parties hereto.

#### **20. DEFAULT BY LESSEE AND LESSOR'S REMEDIES**

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

(1) The failure of Lessee 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 Lessor;

(2) Lessee's default in the observation or performance of any covenant or obligation hereunder and the failure of Lessee to remedy such default for a period of 45 days after receipt of written demand from Lessor to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand. If Lessee 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 Lessee to correct the default;

(3) The commencement by or against Lessee, 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) Lessee 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 Lessee or the property of Lessee or any part thereof, or in the absence of such application, consent, or acquiescence, a trustee, receiver or other custodian is appointed for Lessee or the property of Lessee or any part thereof, and such appointment is not discharged within 60 days;

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

(6) The abandonment by Lessee of the Premises, except in connection with its surrender thereof to an approved assignee, sublessee, mortgagee or other party properly succeeding to Lessee's interest hereunder.

#### B. LESSOR'S REMEDIES UPON MATERIAL BREACH BY LESSEE

Upon material breach by Lessee as set forth above Lessor may give Lessee 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 Lessee'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 Lessor, nor the failure by Lessee 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 Lessor terminates this Lease pursuant to this subsection 20B. All personal property on the Premises after termination of this Lease shall be deemed abandoned by Lessee and subject to removal by Lessor. Lessee shall save Lessor harmless and reimburse Lessor for any costs, loss or damages occasioned by the removal of personal property as authorized under this Lease.

### **21. DEFAULT BY LESSOR AND LESSEE'S REMEDIES**

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

(1) Lessee 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 Lessee, its representatives, successors and assigns, and is within the control of Lessor;

(2) Lessor's default in the observation or performance of any covenant or obligation hereunder and the failure of Lessor to remedy such default for a period of 45 days after receipt of written demand from Lessee to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand. If Lessor 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 Lessor to correct the default.

#### **B. LESSEE'S REMEDIES UPON MATERIAL BREACH BY LESSOR**

Upon material breach by Lessor as set forth above, Lessee may give Lessor 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 Lessor shall have remedied the breach prior to Lessor's actual receipt of said notice.

#### **22. REMEDIES CUMULATIVE, NO IMPLIED WAIVER**

All rights and remedies of Lessor and Lessee 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 Lessor of any rent or other payments due hereunder or any omission by Lessor 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 Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee. No waiver by Lessee of Lessor's default or breach of any of its obligations hereunder shall be construed to be or act as a waiver by Lessee of any subsequent default or breach by Lessor.

#### **23. ENTRY UPON PREMISES**

Lessor 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.

#### **24. 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.

**25. 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

**26. 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 Lessor 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.

**27. 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.

Lessor:

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

Lessee:

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

Lessee shall provide to Lessor, in writing, the name, address and telephone number(s) of a representative of Lessee that Lessor 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 Lessee.

**28. TIME IS OF THE ESSENCE**

Time is of the essence in performance under this Lease.

**29. FORCE MAJEURE**

Force Majeure shall mean delays 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 Lessee's obligation to pay rent or other moneys due, nor shall it extend the term of this Lease.

**30. PROPERTY RIGHTS RESERVED**

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

**31. 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.

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

**FOR MADISON AREA TECHICAL COLLEGE:**

By: Aaron S. Burkes Date: 5-6-2014

**Aaron Burkes**  
Interim Vice President of  
Administration

**FOR DANE COUNTY:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Joe Parisi  
County Executive

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Scott McDonell  
County Clerk