

## **EXHIBIT B**

### **SECTION 5 STANDARD TERMS AND CONDITIONS**

**5.1 Applicability.** These standard terms and conditions apply to Requests for Written Quotes (RFWQ), Bids (RFB), Proposals (RFP), contracts and all other applicable transactions whereby the County acquires goods or services, or both. The terms of this section shall be incorporated into the Contract for Services. By submitting a proposal, the Proposer is agreeing to be bound by these terms and conditions along with any other terms or conditions set forth elsewhere in this RFP. Special provisions for a contract may also apply.

**5.2 Specifications.** The listed specifications are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability or performance level, or any combination thereof, desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Sauk County must be the sole judge of equivalency. Bidders/proposers are cautioned to avoid proposing alternates to the specifications that may result in rejection of their bid/proposal.

**5.3 Deviations and Exceptions.** Deviations and exceptions from terms, conditions, or specifications must be described fully, on the vendor's letterhead, signed, and attached to the bid/proposal. In the absence of such statement, the bid/proposal must be accepted as in strict compliance with all terms, conditions, and specifications and the vendor must be bound to the provisions.

**5.4 Quality.** Unless otherwise indicated in the request, all material must be first quality. Items which are used, pre-owned, demonstrators, obsolete, seconds, defective, or which have been discontinued are unacceptable without prior written approval by Sauk County.

**5.5 Quantities.** The quantities shown on this request are based on estimated needs. The County reserves the right to increase or decrease quantities to meet actual needs.

**5.6 Delivery.** Deliveries must be "Free on Board" to the destination listed on the purchase order or contract. Title and risk of loss of goods must not pass to the County of Sauk until receipt and acceptance takes place at the FOB point. Contractor will be responsible to deliver to the destination shown on the purchase order, with inside delivery required at no additional charge to Sauk County. County will reject shipments sent C.O.D. or freight collect.

**5.7 Pricing and Content.** Sauk County qualifies for governmental discounts; unit prices must reflect these discounts.

Unit prices shown on the Bid or contract must be the price per unit of sale as stated on the request or contract. For any given item, the quantity multiplied by the unit price must establish the extended price; the unit price must govern in the bid evaluation, permits, inspections, and all other contract administration.

Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices must not be subject to increase for term specified in the award. Vendor must submit proposed increases to the contracting department thirty (30) calendar days before the proposed effective date of the price increase. Proposed increases must be limited to fully documented cost increases to the vendor that are demonstrated to be industry wide. Price increases may not be granted unless they are expressed in bid documents and contracts or agreements.

Submission of a bid constitutes bidder's certification that no financial or personal relationship exists between the bidder and any County official or employee except as specially set forth in writing attached to and made part of the bid. The successful bidder must disclose any such relationship which develops during the term of the contract. See Sauk County Code of Ordinances Chapter 36, Code of Ethics.

**5.8 Acceptance-Rejection.** Sauk County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of Sauk County. Submission of a proposal or a bid constitutes the making of an offer to contract and gives the County an option valid for 90 days after the date of submission to the County. The County reserves the right to perform background and reference checks on vendors providing goods and/or services to the County.

Bids/proposals MUST be in hand of Sauk County on or before the date and time that the bid is due. Bids received after the deadline will be rejected. Actual receipt by the County is necessary. THERE WILL BE NO EXCEPTIONS TO THIS POLICY.

**5.09 Ordering/Acceptance.** Written notice of award to a vendor in the form of a purchase order or other document, mailed or delivered to the address shown on the bid will be considered sufficient notice of acceptance of bid. A formal contract signed by both parties must be used.

**5.10 Payment Terms and Invoicing.** Unless otherwise agreed, Sauk County will pay properly submitted vendor invoices within forty-five (45) days of receipt of goods and services. Payment will not be made until goods and/or services are delivered, installed (if required), and accepted as specified. Invoices presented for payment must be submitted in accordance with the contract. A good-faith dispute creates an exception to prompt payment.

**5.11 No Waiver of Default.** In no event must the making of any payment or acceptance of any service or product constitute or be construed as a waiver by the County of any breach of the covenants of a contract, or a waiver of any default of the successful vendor. The making of any such payment or acceptance of any such service or product by the County while any such default or breach must exist must in no way impair or prejudice the right of the County with respect to recovery of damages or other remedy as a result of such breach or default.

**5.12 Taxes.** Sauk County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. Sauk County, including all its departments, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. The County is exempt from payment of Wisconsin sales or use tax on its purchases. Sauk County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Vendors performing construction activities are required to pay state use tax on the cost of materials.

**5.13 Entire Agreement.** These Standard Terms and Conditions must apply to any contract or order awarded as a result of this request. Special requirements of a resulting contract may also apply. The written contract and/or order with referenced parts and attachments must constitute the entire agreement, and no other terms and conditions in any document, acceptance, or acknowledgment must be effective or binding unless expressly agreed to in writing by the County.

**5.14 Guaranteed Delivery.** Failure of the vendor to adhere to delivery schedules as specified or to promptly replace rejected materials must render the vendor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs must include administrative costs to retain such replacement.

**5.15 Applicable Law.** This contract must be governed by the laws of the State of Wisconsin, and venue for any legal action between the parties must be in the Sauk County Circuit Court. The vendor must at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. Sauk County also reserves the right to cancel this contract if the County learns the contractor is debarred from a local governmental entity, the State of Wisconsin or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from local or federal procurement and non-procurement contracts.

**5.16 Antitrust Compliance.** Those parties contracting with the County, or submitting bids under this Request for Bid, certify that with respect to all aspects of this bid and any subsequent agreement they have complied and will comply with all Federal and State Anti-Trust and Restraint of Trade laws and regulations. FURTHERMORE, said party agrees to defend and hold harmless the County of Sauk against any claims to the contrary.

**5.17 Assignment.** No right or duty in whole or in part of the vendor under a contract may be assigned or delegated without the prior written consent of Sauk County.

**5.18 Subcontracting.** If sub-contractors are to be used, this must be clearly explained in the Bid. Awarded vendor(s) will not be permitted to sublet, sell, transfer, assign or otherwise dispose of the contract or any portion therein, or its right, title, or interest in the contract to any person, vendor(s) or other organization without prior written consent of the County. No subcontract must, under any circumstances, relieve the contractor of liability and obligation under this contract. The awarded contractor must be fully responsible for the acts, errors, and omission of subcontractor(s).

**5.19 Nondiscrimination/Affirmative Action.** The vendor agrees, in accordance with Sec. 111.321, Wis. Stats. not to discriminate against any person, whether an applicant or recipient of services, an employee, or applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The vendor must provide a harassment-free work environment. These provisions must include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, including apprenticeships, rates of pay or other forms of compensation. Failure to comply with these Terms and Conditions may result in the vendor being debarred, termination of the contract and/or withholding of payment.

**5.20 Safety Requirements.** All employer practices, employee practices, materials, equipment, and supplies provided to Sauk County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards. The vendor must comply with the County's worksite rules. Vendor must comply, train, and accept exclusive responsibility for its employees while on County property.

**5.21 Safety Data Sheets.** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, the vendor must provide one (1) copy of Safety Data Sheets for each item with the shipped container(s) and one (1) copy with the invoice(s).

**5.22 Warranty.** Unless specifically expressed otherwise in writing, goods and equipment purchased as a result of this request or contract must be warranted against defects by the vendor for one (1) year from date of receipt. An equipment manufacturer's standard warranty must apply as a minimum and must be honored by the vendor.

**5.23 Indemnification and Insurance.** The vendor must bear the full and complete responsibility for all risk of damage of premises, equipment, procedure, or money resulting from any cause whatsoever and must not penalize the County for any losses incurred.

Vendor must indemnify, hold harmless, and defend Sauk County, its officers, boards, commissions, agents and employees from any and all liability, claims, demands, losses (including, but not limited to, property damage, bodily injury and loss of life), costs, expenses or damages which Sauk County, its officers, employees, agents, boards, or commissions may sustain, incur or be required to pay by reason of vendor furnishing goods or services required to be provided pursuant to this contract where such liability is founded upon or grows out of acts or omissions of any agents or employees of the vendor. Nothing contained herein must require vendor to defend or indemnify the County for losses, damages, injuries, or

death arising out of the negligence of the County, its agents or employees. The obligations of vendor under this paragraph must survive the expiration or termination of the contract or agreement.

To secure vendor's obligation to hold harmless and indemnify the County, vendor must procure and maintain the following insurance:

Worker's Compensation Insurance as prescribed by the laws of the State of Wisconsin.

**General Liability:**

General Aggregate	\$1,000,000.00
Products-Comp/Op Agg	\$1,000,000.00
Personal & Adv. Injury	\$1,000,000.00
Each Occurrence	\$1,000,000.00

**Automobile:** (Combined single limit)

\$1,000,000.00

**Professional Liability:**

\$1,000,000.00

**Excess Liability:** (Umbrella)

\$1,000,000.00.

(Each occurrence and aggregate.)

The vendor must add Sauk County, its officers, agents and employees as must be named as an additional named insured.

Vendor must provide policy, countersigned by an insurer licensed to do business in the State of Wisconsin, covering the period of the agreement/contract indicating that Sauk County is an additional named insured on public liability, professional liability and property damage insurance required above.

Vendor must provide insurance certificates indicating required coverage, countersigned by an insurer licensed to do business in Wisconsin, covering the period of the agreement/contract. The insurance certificate is required to be presented prior to the issuance of the purchase order or before commencement of the contract.

**5.24 Termination for Default.** Failure of the awardee to perform any of the provisions of the contract must constitute a breach of contract, in which case, the County may require corrective action within ten calendar days (10) from date of receipt of written notice citing the exact nature of such breach. Failure to take corrective action or failure to provide a written reply within the prescribed 10 days must constitute a default of the contract. If defaulted, the contractor must be liable for liquidated damages, if any. Sauk County reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach of default of this contract and may contract with another party with or without solicitation of proposals or further negotiations. As a minimum, contractor must be required to pay any difference in the cost of securing the products or services covered by this contract or compensate for any loss to County should it become necessary to contract with another source because of this default, plus reasonable administrative costs, reasonable attorney's fees, court cost and expenses.

**5.25 Termination for Convenience.** Upon seven (7) calendar days written notice delivered by first class postpaid United States Mail, to the address indicated in the proposal/bid, to the successful bidder/proposer, Sauk County may without cause and without prejudice to any other right to remedy, terminate the agreement for Sauk County's convenience whenever Sauk County determines that such termination is in the best interest of the County. Where the agreement is terminated for convenience of Sauk County the notice of termination must state that the contract is being terminated to the convenience of Sauk County under the termination clause and the extent of the termination. Upon receipt of such notice, the contractor must promptly discontinue all work at the time and to the extent indicated on the notice of termination. The contractor must also terminate all outstanding sub-contractors and purchase orders to the extent that they relate to the terminated portion of the contract and refrain from placing further orders and subcontracts except, as they may be necessary and complete any continued portions of the work.

**5.26 Non-Appropriation of Funds.** Sauk County intends to make all payments required to be made

under any Agreement resulting from this RFP. However, in the event Sauk County's legislative body, the Sauk County Board of Supervisors, does not appropriate funds for the continuation of the Agreement for any fiscal year after the first fiscal year, said agreement will be terminated without damages or cost for such termination.

**5.27 Recordkeeping and Record Retention – Public Works Contracts.** The contractor on a public works contract must establish and maintain adequate payroll records for all labor utilized as well as records for all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be kept in accordance with generally accepted accounting procedures. Sauk County must have the right to audit, review, examine, copy, and transcribe any such records or documents relating to any contract resulting from this bid/proposal held by the contractor. The vendor will retain all documents applicable to a contract for a period of not less than five (5) years after final payment is made.

**5.28 Independent Vendor Status.** Contractor holds itself out as an independent contractor. Contractor: is a separate and independent enterprise from the County; has a full opportunity to find other business; has made its own investment in its business, trade or profession; possesses the equipment, instrumentalities, materials, and office necessary to perform the work; controls the means of performing the work; and risks profit and loss as a result of the work. Contractor is acting as an independent contractor in providing and performing the services contemplated by this contract. It is not intended that anything in, or done pursuant to, this contract create the relationship of employer and employee, principal and agent, partners, or joint venture between County and Contractor. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor is an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, and the provisions of the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. It is not the intention of the parties that this contract create any joint employment relationship between the Contractor and the County, and the county shall not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages, overtime premiums, unemployment insurance benefits, worker's compensation benefits, health insurance, health benefits, disability benefits, or retirement benefits. Contractor is not entitled to receive any benefits from County or to participate in any County benefit plan.

**5.29 Public Records, General.** It is the intention of the County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid/proposal openings are public unless otherwise specified. If awarded this contract, Vendor must assist Sauk County in complying with any public records request made under Wisconsin Law or Federal Freedom of Information Act.

The Parties acknowledge that Sauk County is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see sections 19.32-19.39 & 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this Agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws.

To comply with any request under said Public Record Law, the provider/contractor herein must produce copies of all materials gathered or produced or modified pursuant to this contract to Sauk County, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit. According to Wisconsin case law, even if records are created or maintained by, or in the custody of, the provider as an independent contractor, they, along with the raw data used to create the record, are nevertheless public records that must be made available to the public within a reasonable time and without delay upon request by any person, and in the format in which they were created. Provider/contractor agrees to hold Sauk County, its agents, officials and employees harmless and to indemnify them and Sauk County for all costs, fees, including all reasonable attorney fees and expense of all kinds, and any judgments, orders,

injunctions, writs of mandamus, and damages or expense of whatever kind for which Sauk County or its agents, officials or employees may expend or be held liable due to the Provider/contractor's failure to comply with the Wisconsin Public Records and Open Meetings laws, or with this agreement.

Any Public Record Law request received directly by a contractor related to this contract with Sauk County must immediately be reported to the County Administrator for the County.

**5.30 Public Records, Trade Secrets/Proprietary Information.** Any restrictions on the use of data contained within a request must be clearly stated information identified on a document created by the Proposer labeled "Trade Secret, Confidential and Proprietary Information Form" included with the proposal. Proprietary information submitted in response to a request will be handled in accordance with applicable the Wisconsin Public Records Law. If the vendor asserts in the bid/proposal that any of its books and records of its business practices and other matters collectively constitute a trade secret as that term is defined in s. 134.90(1)(c), Wis. Stats., County will not release such records to the public without first notifying the vendor of the request for the records and affording the vendor an opportunity to challenge in a court of competent jurisdiction the requester's right to access such records. The entire burden of maintaining and defending the trade secret designation must be upon the vendor. The vendor acknowledges and agrees that if the vendor fails to initiate legal action to defend the trade secret designation within 5 business days of written notification of Public Records Request, or be unsuccessful in its defense of that designation, County shall be required to and will release the records.

In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to of any trade secret or any information designated as Proprietary information on the "Trade Secret, Confidential and Proprietary Information Form" Proposer shall, at its sole cost and expense, fully cooperate with Sauk County in the defense of said action, including but not limited to providing access to Sauk County to materials needed, or potentially needed for discovery and defense of the action. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to a trade secret listed on "Trade Secret, Confidential and Proprietary Information Form", and such item is determined by a court of competent jurisdiction to be releasable to any person under any such law, then, Proposer shall pay all of the costs of litigation of the Sauk County, including but not limited to actual attorney's fees, and also all fines or penalties levied against Sauk County or any of its supervisors, employees, or agents for failure to release.

**5.31 Public Records, Confidential Information (Not subject to Section 5.29 above).** Information supplied by Proposer to Sauk County is subject to Subchapter II, Chapter 19 of the Wisconsin Statutes (the Wisconsin Open Records law). For the purposes of this contract the only information supplied by Proposer to Sauk County that may be considered confidential information not subject to Section 5.30 above shall include only the information identified on a document created by the Proposer labeled "Trade Secret, Confidential and Proprietary Information Form" included with the proposal. It is expressly agreed by the parties that this contract itself is not a trade secret, and, therefore, need not be held in confidence by Sauk County. The parties agree that, Proposer would not enter into this contract, and would not release to Sauk County the items listed on the "Trade Secret, Confidential and Proprietary Information Form" as confidential/proprietary without this restriction. Notwithstanding the foregoing, confidential information shall not include information that the receiving party can document was independently developed by them without use of the other party's confidential information, known prior to disclosure or acquired from a third party free of disclosure obligations. The confidentiality restriction is subject and subordinate to the Wisconsin Open Records Law and other applicable laws relating to public records. Proposer understands and agrees that, because Sauk County is party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Proposer. Proposer agrees to fully comply with such laws, and to cooperate with Sauk County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of the county. Compliance and cooperation of Proposer shall be at its sole cost and expense. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to the confidentiality of any item listed on "Trade

Secret, Confidential and Proprietary Information Form” Proposer shall, at its sole cost and expense, fully cooperate with Sauk County in the defense of said action, including but not limited to providing access to Sauk County to materials needed, or potentially needed for discovery and defense of the action. In the event that Sauk County becomes involved in an action under the Wisconsin Open Records law, or other applicable law or laws relating in any way to the confidentiality of any item listed on “Trade Secret, Confidential and Proprietary Information Form”, and such item is determined by a court of competent jurisdiction to be releasable to any person under any such law, then, Proposer shall pay all of the costs of litigation of the Sauk County, including but not limited to actual attorney’s fees, and also all fines or penalties levied against Sauk County or any of its supervisors, employees or agents for failure to release. Proposer asserts, and County understands that, without this pledge of confidentiality, Proposer would not provide the confidential information to County and would not enter into this contract with County.

**5.32 Patent, Copyright and Trademark Infringement.** The contractor guarantees goods sold to the County were manufactured or produced in accordance with applicable federal labor laws, and that the sale or use of the articles described herein do not infringe any patent, copyright, software, or trademark. The contractor covenants that it will, at its own expense, defend and hold harmless the County from every suit which must be brought against Sauk County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent, copyright, software or trademark by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits, reasonable expenses, reasonable attorney fees in defense of such actions, recoverable in any such suit.

**5.33 Licensure, Certification, and Statutory Requirements.** Contractor is responsible to comply with all statutory rules and regulations. All federal, state, and local laws, rules, and regulations governing the goods or service described in the specification will apply and will be deemed incorporated into the contract. These requirements must be at contractor’s expense. When required any and all permits and inspections must be included in the bid price and must not be an additional cost to the County.

**5.34 Promotional Releases.** Contractor agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by Sauk County.

**5.35 Force Majeure.** Neither party must be in default under this Agreement if nonperformance of any condition is due to reasons beyond the reasonable control of the party, and nonperformance is not due to a party’s negligence. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the United States government in either its sovereign or contractual capacity, fires, floods, pandemics, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

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