

Sauk County Health Care Center Cropland Lease 2023-2027

This lease is made between the County of Sauk, a municipal corporation, with its seat of government located at 505 Broadway Street, Baraboo, Wisconsin, herein called Lessor, and Jason Bergman, Loganville, Wisconsin, herein called Lessee.

Lessor hereby leases to Lessee the premises, situated in the City of Reedsburg, County of Sauk, and State of Wisconsin, known and described as follows:

Sauk County Health Care Center Cropland, approximately 11.4 (eleven and four tenths) acres of tillable cropland located adjacent to the Sauk County Health Care Center. (See Exhibit A, attached and incorporated herein.)

1. **Term.** Lessor demises the above premises for a term of five (5) years, commencing on January 1, 2023, and terminating on December 31, 2027. Lease term is contingent upon the Lessor obtaining an annual conditional use permit (CUP) from the City of Reedsburg.
2. **Rent.** The rent for said premises shall be \$175.00 dollars/acre (\$1,995.00 dollars per year), due in advance of the first day of March, during the term of this lease. All rental payments shall be made to Lessor, at the Sauk County Land Resources and Environment Department, 505 Broadway, Baraboo, Wisconsin 53913.
3. **Use.** Lessee shall use and occupy the cropland for growing and harvesting of agricultural crops while preserving soil, water, and other natural resources consistent with the terms and conditions of this lease. The premises shall be used for no other purpose.
 - a. Field equipment operations (planting, spraying, harvesting) shall be conducted between the hours of 7 a.m. and 9 p.m.
 - b. Lessee must notify neighbors 24 hours prior in person or with door hangers for spraying or harvesting.
 - c. Remove crops each year of the lease by December 1st.
 - d. Maintain/trim along curbs.
 - e. 5' setback along adjacent lots.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair. Lessee shall, at their own expense and at all times, maintain the premises and any existing fencing in good and safe condition, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for the actual cost of any repairs required or maintenance necessitated by any damage caused by the Lessee to the demised premises. Lessee shall not damage the city street curb or blacktop.
 - a. Mineral rights: Lessee shall not market gravel, or any other part of the leased property. Lessee shall not have any right to any above- or below-ground mineral rights.
 - b. Conservation Practices: Lessee agrees to preserve established water sources, tile drains, tile outlets, grass waterways, buffer strips and diversions and to refrain from any operation that will injure such. Damage will be repaired at the Lessee's expense. Contour strips and waterways cannot be eliminated or changed contrary to the conservation plan (See Exhibit B attached and incorporated herein). All crops must be harvested prior to December 1, 2027.

- c. Crop rotation: All fields will be no tilled and follow the crop rotation identified in the approved conservation plan (See Exhibit B attached and incorporated herein).
 - i. Cover Crops: Cover crops will be established as indicated in the approved conservation plan. Lessee shall establish cover crops within ten (10) days of conventional crops being harvested (subject to weather conditions). Lessor agrees to furnish all cover crop seed to be used on the farm. If cover crops are not planted by the established deadline, a penalty of \$1,000 shall be administered.
 - ii. Fall Seeded Crops: Winter wheat will be established by November 1 during the final year of the lease. Extension of seeding dates will be determined on a case-by-case basis and must be approved by the Sauk County Land Resources and Environment Department.
- d. Nutrient Management: Lessee shall develop and follow a nutrient management plan to meet Natural Resources Conservation Service Standard 590 for all fertilizer applications on the cropland. The lessee shall attend a Nutrient Management Farmer Education (NMFE) class within the first year of the lease commencement date. This class will provide the lessee with a basic understanding of nutrient management plan development and implementation. The plan shall be approved by the Sauk County Land Resources and Environment Department prior to any commercial fertilizer applications. Manure and industrial and/or municipal waste applications are not allowed on the premises.
- e. Soil Fertility: Lessee shall maintain phosphorus and potash levels previously established for each field. Phosphorus and potash levels shall be established by Lessor with written notice to the Lessee at the commencement of the lease term. Lessee is responsible for maintaining soil fertility levels and ensuring that the levels are at the same or better level at the termination of the lease. Lessor shall provide for soil sampling verification, at Lessor's expense. In the event Lessee fails to apply necessary amounts of fertilizer prior to the expiration of this contract, Lessor may make such applications and the costs thereof shall be reimbursed by Lessee to Lessor. Lessor is not responsible for maintaining soil fertility levels nor responsible if Lessee voluntarily chooses to maintain a higher fertility level. Lessor agrees to furnish all limestone to be used on the farm, and in such amounts to bring and maintain PH at a 6.6 level.
- f. Herbicide & Pesticide Use: Lessee shall apply herbicides with residual in a manner that will not interfere with the crop rotation specified in the conservation plan. Hazardous wastes and other debris shall not be accumulated or disposed of on Lessor's property. Hazardous waste shall include, but is not limited to, empty pesticide and oil containers and waste oil.
- g. Crop Acreage Certification: Lessee shall report planted acres to the Sauk County Farm Service Agency (FSA) office to maintain maximum eligibility to participate in the government programs in the future, even if the Lessee chooses not to participate in government programs during that year. The Lessee shall submit a copy of the FSA report to the Lessor by August 1 of each year. Land leased under this contract will not be combined with any other land for grain base purposes without prior written permission of the Lessor.

- h. **Requested Information:** Lessee shall provide lessor with input costs and crop yield information annually by December 31st. Data shall be collected using a yield monitor and provided as a removable storage device (i.e. SD card, thumb drive). Information will be used as a case study looking at the efficacy of soil health practices. If data has not been delivered by the established deadline, a penalty of \$1,000 shall be administered.
- 5. **Alterations.** Lessee shall not, without first obtaining the prior written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises. Lessee shall have the right to erect, maintain and remove, at Lessee's expense, temporary fence and moveable buildings on the leased land, provided that such fence or building or their removal do not damage the Lessor's property in any way, and provided that Lessee shall not create anything which shall constitute a nuisance to the Lessor. The Lessor shall have the right to determine in its sole discretion what constitutes a nuisance under this section, but such determination may be reviewed as to reasonableness and the assessment of damages under the arbitration provisions of this lease.
- 6. **Reduction of Leased Area.** Lessor reserves the right to reduce the area of cropland provided by this lease, as described above, in total or in part. Such reduction shall occur in the event that the Sauk County Board of Supervisors shall by Resolution require such property for another purpose. Any such reduction shall be effective sixty (60) days following the date of adoption of said Resolution. Lessee shall be entitled to a reduction in the rents due under this lease, based upon a prorated reduction in the leased area. Any reduction in acreage shall reduce the rental amount for that and any succeeding year by the average annual acreage rental rate as determined by the annual cropland bid divided by the number of cropland acres.

If the reduction should occur during the growing period when crops are already planted, provided Lessee did not receive notice of the intended reduction prior to the actual planting of the crop, Lessee shall be entitled to a credit against the next rent payment to compensate for the expense of planting and resulting loss in yield. Lessee and Lessor shall agree upon an independent appraiser to establish the value of the crop lost due to the reduction of leased area. The cost of the appraiser shall be borne by the Lessor. In the event that the Lessor and Lessee cannot agree upon an appraiser, Lessee and Lessor shall each select an agricultural appraiser, and these two shall select a third appraiser. This group of three appraisers shall then establish the value of crop lost due to the reduction. The cost for this appraisal process shall be divided equally between the Lessor and Lessee.

- 7. **Utilities and Easements.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessor. All easements now in force, or which may hereafter be in force, pertaining to the premises, shall remain in force for the duration of this lease. Fire hydrant lines, sewage lines and manholes located on the leased property will be maintained by the Lessor. Access to these lines is reserved for maintenance work. If damage occurs to crops as a result of this maintenance work, the Lessee will be credited for the lost crop as per the process identified in Section 6.
- 8. **Lessor's Remedies on Default.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof including maintaining adequate soil fertility levels, or becomes insolvent or bankrupt, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 15 days, after the giving of such notice, or such default is of such nature that it cannot be completely cured

Sauk County Health Care Center Cropland Lease 2023-2027

within such period, if Lessee does not commence such curing within 15 days and thereafter proceed with reasonable diligence and in good faith to cure such default, then Lessor may terminate this lease on not less than 15 days' notice to Lessee. On the date specified in such notice, the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as herein provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee, Lessee's crops, other occupants, or any effects. No failure to enforce any term shall be deemed a waiver.

Lessee may not and shall not harvest crops after service of a notice of default. If the default is not cured within the 15-day period, Lessor shall be entitled to a lien on any crops harvested, or to harvest the crops itself, and sell same, in order to reimburse the Lessor for any expenses incurred.

9. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Exhibit A – Sauk County Health Care Center Cropland Map

Exhibit B – Sauk County Health Care Center Conservation Plan

Exhibit C – Standard Clauses – Sauk County Health Care Center Cropland Lease

Exhibit D – Request for Bid Standard Terms and Conditions

FOR LESSEE:

Signed this ____ of _____, _____.

Jason Bergman

FOR THE COUNTY OF SAUK:

Signed this ____ of _____, _____.

Brent Miller, Administrator

ATTEST

Signed this ____ of _____, _____.

Rebecca Evert, County Clerk
For Lessor

Exhibit A

Legend

Crop Rotation

- Cg-Sb-Cg-Sb-W-As-A-A-A-A
- Cg-Sb-W-cc
- Demonstration Plot
- Pasture

1HCC - 11.4 ac

33



Exhibit B

NM1: Narrative and Crops Report

Starting Year	2021
Reported For	Sauk County Farm Subfarm: HCC
Printed	2022-05-27
Plan Completion/Update Date:	2022-05-18
SnapPlus Version 20.4 built on 2021-06-03	
C:\SnapPlus2\MySnapPlusData\Sauk County Farm NMP.snapDb	

Prepared for:
Sauk County Farm
505 Broadway
Baraboo, 53913

SubFarm has 1 fields totalling 11.4 cropped acres.
Farm Narrative: None

Annual Farm Notes:

No Annual Farm Notes

Spreader Calibration Methods: Custom applications, Equipment calibration

Narrative and Crops:

Field Name	Field Acres	2021	2022	2023	2024	2025	2026	2027	2028
1HCC	11.4	Soybeans 7-10 inch row No Till 46-55 bu/acre	Corn grain No Till 151-170 bu/acre	Soybeans 7-10 inch row No Till 46-55 bu/acre	Winter wheat (grain) with interseeded red clover cover crop No Till 61-80 bu/acre	Corn grain No Till 151-170 bu/acre	Soybeans 7-10 inch row No Till 46-55 bu/acre	Winter wheat (grain) with interseeded red clover cover crop No Till 61-80 bu/acre	Corn grain No Till 151-170 bu/acre

Summary by Crop:

NOTE: Yields calculated using the midpoint of the SnapPlus yield goal range for each crop.

Crops Grouped By Category		2021	2022	2023	2024	2025	2026	2027	2028
Corn grain	Acres bu		11 1,766			11 1,766			11 1,766
Soybeans 7-10 inch row	Acres bu	11 556		11 556			11 556		

Crops Grouped By Category		2021	2022	2023	2024	2025	2026	2027	2028
Winter wheat (grain) with interseeded red clover cover crop	Acres bu				11 776			11 776	

Exhibit C

STANDARD CLAUSES

Sauk County Health Care Center Cropland Lease

1. **Insurance.** During the term of this Agreement, LESSEE shall, at LESSEE's sole cost, maintain the following insurance:

Comprehensive General Liability Limits:
\$1,000,000 bodily injury/ property damage.

Excess Umbrella Liability Limits:
\$1,000,000.

Worker's Compensation:

- a. Coverage A: Limits – Statutory
- b. Coverage B: Employer's Liability Limits
- c. Bodily Injury by Accident - \$100,000 each accident minimum
- d. Bodily Injury by Disease - \$100,000 each employee minimum
- e. Bodily Injury by Disease - \$500,000 policy limit minimum

Certificates of insurance are required for all policies. The Certificate of General Liability Insurance & Excess Umbrella Liability shall name the County as an additional insured on the policy and must require that a thirty (30) day cancellation notice be given to the County. An updated copy of the Certificate must be provided anytime a change is made to any policy. LESSEE, at their expense, shall maintain public liability insurance issued by an insurance company licensed to do business in the State of Wisconsin, including bodily injury and property damage coverage insuring LESSEE and LESSOR with minimum coverage as follows:

LESSEE shall provide LESSOR with a Certificate of Insurance annually by February 1st, showing LESSOR as additional insured with policy limits at minimum of \$1,000,000 single limit and \$3,000,000 aggregate. The Certificate shall provide for a ten-day written notice to LESSOR in the event of cancellation or material change of coverage. To the maximum extent permitted by applicable insurance policies which may be owned by LESSOR or LESSEE, LESSEE and LESSOR, for the benefit of each other, may waive any and all rights of subrogation which might otherwise exist.

2. **Effective Date.** The effective date of this Agreement shall be the date of the last signature.

3. **Standard of Care.** The same degree of care, skill, and diligence shall be exercised in the performance of this agreement as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

4. **Survival.** The warranties, representations and covenants of this Agreement shall survive completion of the Services under this agreement or any termination of this Agreement.

5. **Delay in Performance.** Neither party shall be considered in default of this Agreement or any Task Order for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, pandemics, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other

labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses or authorizations from any local, state or federal agency for any of the supplies, materials, accesses, or services required to be provided by either party under this Agreement or any Task Order. The nonperforming party shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

6. **Notices.** Any legal notice required by this Agreement shall be made in writing to the address specified below:

LESSOR: Sauk County Clerk
505 Broadway
Baraboo, WI 53913

With a copy to: Lisa Wilson
Director
Land Resources and Environment Dept.
505 Broadway
Baraboo, WI 53913

LESSEE: Jason Bergman
S5775 Center Valley Rd
Loganville, WI 53943

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the parties.

7. **Termination, General.** This contract may be terminated by either party at any time upon 30 days written notice to the other party. Upon termination, for any reason, County's liability shall be limited to the services authorized and satisfactorily rendered by Provider through the date of termination as reflected by invoices timely submitted. If the termination should occur during the growing period when crops are already planted, provided Lessee did not receive notice of the termination prior to the actual planting of the crop, Lessee shall be entitled to a payment to compensate for the expense of planting and resulting loss in yield. Lessee and Lessor shall agree upon an independent appraiser to establish the value of the crop lost due to the reduction of leased area. The cost of the appraiser shall be borne by the Lessor. In the event that the Lessor and Lessee cannot agree upon an appraiser, Lessee and Lessor shall each select an agricultural appraiser, and these two shall select a third appraiser. This group of three appraisers shall then establish the value of crop lost due to the reduction. The cost for this appraisal process shall be divided equally between the Lessor and Lessee.

8. **Waiver.** A waiver by either of the parties of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

9. **Successors and Assigns.** The parties each bind themselves and their successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, the partners, in the case of an LLC its members, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

10. **No Construction Against Either Party.** This agreement is the product of negotiations between the parties and was either reached with the advice of legal counsel or the

Exhibit C

opportunity to obtain legal counsel, and shall not be construed against either party.

11. Multiple Originals. This contract may be executed in multiple originals, each of which together shall constitute a single agreement.

12. Captions. The parties agree that in this contract, captions are used for convenience only and shall not be used in interpreting or construing this contract.

13. Statutory Protections. It is agreed by the parties that nothing in this contract, including but not limited to indemnification and hold harmless clauses, shall in any way constitute a waiver on the part of the County of any immunity, liability limitation or other protection available to the County under any applicable statute or other law. To the extent that any provision of this contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either statutory or contractual, provide a greater benefit to the County shall apply unless the County elects otherwise.

14. Open Records Law Compliance. LESSEE understands and agrees that, because County is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by LESSEE and/or the County. LESSEE agrees to fully comply with such laws, and to cooperate with 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 county. Compliance and cooperation of LESSEE shall be at its sole cost and expense.

15. Relationship of Parties. Nothing in, or done pursuant to, this contract shall be construed to create the relationship of employer and employee, principal and agent, partners, or a joint venture between County and AAW. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the LESSEE will be 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, the provisions of the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. This contract shall not be construed as creating any joint employment relationship between the LESSEE and the County, and the County will not be liable for any obligation incurred by LESSEE 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.

16. Governing Law, Jurisdiction and Venue. This contract shall be construed and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of laws provision or rule, whether of the State of Wisconsin or any other jurisdiction that would cause the application of laws of any jurisdiction other than those of the State of Wisconsin. The parties hereby irrevocably submit to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this contract. The parties further agree that the venue for any legal proceedings related to this contract shall be Sauk County, Wisconsin. The foregoing shall not be

construed to limit the rights of a party to enforce a judgment or order of the above court in any other jurisdictions.

17. Competence, Solvency. LESSEE warrants and represents that it is sufficiently experienced and competent to provide, perform and complete all services in full compliance with and as required by or pursuant to this contract. LESSEE represents and warrants that it is financially solvent, and has the financial resources necessary to provide, perform and complete the duties and functions in full compliance with and as required by this contract. Contractor shall provide, perform and complete all services contemplated by this contract in an expeditious and proper.

18. Amendment. No amendment of this Contract shall be binding unless in writing and signed by all of the parties.

19. Compliance with Laws. The parties agree to comply with all applicable Federal, State and local codes, regulations, standards, ordinances, and other laws.

20. Electronic Signing. It is agreed by the parties that either party or both may, by email, provide the other party with a copy of this contract, in PDF form or otherwise, showing the signatures of, or on behalf of the sending party, with such signatures being as binding as original signatures, regardless of whether the other party signs in the same fashion, or by using original ink signatures. For the purposes of this section, "signatures" may be original written signatures, photocopies of signatures, or signatures added to a contract or through the addition by a signing party of a typed or electronically added signature.

21. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

20. Assignment and Subletting. Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, shall be considered a default under the terms and conditions of this lease, and the Lessor may terminate this lease immediately for default. If the Lessor approves a sublease, the Lessee shall continue to be responsible for the actions of the Sublessor including any and all damages of said Sublessor.

21. Possession. If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within ten days of the commencement of the term hereof.

22. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused.

23. Subordination. This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

24. Eminent Domain. If the premises or any part thereof or any estate therein, materially affecting Lessee's use of the

Exhibit C

premises, shall be taken by eminent domain, this lease shall terminate on the date when the title vests pursuant to such taking. The rent on any impacted acreage shall be reduced for that year and any succeeding rental year by the average annual acreage rental rate as determined in Section 6. Disposition of any crop on the impacted lands shall be negotiated as a part of the eminent domain process. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

EXHIBIT D: REQUEST FOR BID

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 lease agreement. By submitting a bid, the Bidder is agreeing to be bound by these terms and conditions along with any other terms or conditions set forth elsewhere in this RFB. Special provisions for a lease agreement 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 bids 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 RFB. 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 Bidder labeled “Trade Secret, Confidential and Proprietary Information Form” included with the bid. 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 Propriety information on the “Trade Secret, Confidential and Proprietary Information Form” Bidder 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 trader 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, Bidder 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 5.30 above). Information supplied by Bidder 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 Bidder 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 Bidder labeled “Trade Secret, Confidential and Proprietary Information Form” included with the bid. 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, Bidder 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.

Bidder 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 Bidder. Bidder 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 Bidder 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” Bidder 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, Bidder 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. Bidder asserts, and County understands that, without this pledge of confidentiality, Bidder 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.

Lisa Wilson, AICP-Director
Sauk County Land Resources and Environment Department West
Square Building, Rm 248
505 Broadway
Baraboo, WI 53913
E-mail: lisa.wilson@saukcountywi.gov