

Dane County Contract Cover Sheet

Revised 07/2023

Res 264
significant

Dept./Division	Dane County Department of Waste and Renewables		
Vendor Name	Purple Cow Organics, LLC	MUNIS #	16401
Brief Contract Title/Description	AWARD OF AGREEMENT FOR PROFESSIONAL SERVICES FOR MANAGING FOOD WASTE AND OTHER ORGANIC MATERIALS IN DANE COUNTY		
Contract Term	2024 - 12/31/2028		
Contract Amount	\$997,000.00		

Contract # Admin will assign	15289
Type of Contract	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
Name	Alex Thomas	Name	Jeanne Whitish
Phone #	608-516-1542	Phone #	608-931-0349
Email	thomas.alex@countyofdane.com	Email	jwhitish@purplecoworganics.com
Purchasing Officer	Pete Patten		

Purchasing Authority	<input type="checkbox"/> \$12,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$12,000 – \$43,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input checked="" type="checkbox"/> Over \$43,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP # 323028
	<input type="checkbox"/> Bid Waiver – \$43,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$43,000 (N/A to Public Works)	
	<input type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Req # 932	Org: SWADMPRJ	Obj: 20550	Proj:	\$ 2,000.00
	Year 2024	Org: SWCOMPOST	Obj: 51033	Proj:	\$ 75,000.00
		Org:	Obj:	Proj:	

Budget Amendment	
<input type="checkbox"/>	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000	<input type="checkbox"/> Contract does not exceed \$100,000	Res # 264
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 – resolution required.	
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year 2023

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input checked="" type="checkbox"/> No modifications.	<input type="checkbox"/> Modifications and reviewed by:	<input type="checkbox"/> Non-standard Contract

APPROVAL	
Dept. Head / Authorized Designee	
Welch, John	Digitally signed by Welch, John Date: 2024.01.10 10:00:27 -06'00'

APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 1/10/24	Date Out: _____	<input type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Thursday, January 11, 2024 8:37 AM
To: Hicklin, Charles; Gault, David; Patten (Purchasing), Peter
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #15289
Attachments: 15289.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 1/11/2024 9:32 AM	
	Gault, David	Read: 1/11/2024 10:03 AM	Approve: 1/11/2024 10:04 AM
	Patten (Purchasing), Peter		Approve: 1/11/2024 10:02 AM
	Stavn, Stephanie	Read: 1/12/2024 3:54 PM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #15289

Department: Public Works

Vendor: Purple Cow Organics

Contract Description: Professional Services for Managing Food Waste & Other Organic Materials in Dane County (Res 264)

Contract Term: 2/1/24 – 12/31/2028

Contract Amount: \$997,000.00

Michelle Goldade

Administrative Manager
Dane County Department of Administration
Room 425, City-County Building
210 Martin Luther King, Jr. Boulevard
Madison, WI 53703
PH: 608/266-4941
Fax: 608/266-4425
TDD: Call WI Relay 711

Please Note: I currently have a modified work schedule...I am in the office Mondays and Wednesdays and working remotely Tuesdays, Thursdays and Fridays.

Goldade, Michelle

From: Krohn, Margaret
Sent: Tuesday, January 16, 2024 9:58 AM
To: Goldade, Michelle
Subject: Approve: Contract #15289

DANE COUNTY CONTRACT # 15289

Revised 06/2021



Department: Waste & Renewables
Provider: Purple Cow Organics LLC
Expiration Date: December 31, 2028
Maximum Cost: \$997,000

Registered Agent (if applicable): N/A
Registered Agent Address: N/A

THIS AGREEMENT, made and entered into, by and between the County of Dane (hereafter referred to as "COUNTY") and Purple Cow Organics LLC (hereafter, "PROVIDER"),

WITNESSETH:

WHEREAS COUNTY, whose address is 1919 Alliant Energy Center Way Madison WI 53713, desires to purchase services from PROVIDER for the purpose of managing food waste and other organics materials; and

WHEREAS PROVIDER, whose address is 5935 County Hwy K Waunakee, WI 53597, is able and willing to provide such services at 3001 Meier Road, Madison, WI;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, COUNTY and PROVIDER do agree as follows:

I. TERM:

The term of this Agreement shall commence as of the date by which all parties have executed this Agreement and shall end as of the December 31st, 2028 set forth on page 1 hereof, unless sooner agreed to in writing by the parties. PROVIDER shall complete its obligations under this Agreement not later than the December 31st, 2028. COUNTY shall not be liable for any services performed by PROVIDER other than during the term of this Agreement. COUNTY shall never pay more than the Maximum Cost as stated above for all services. Upon failure of PROVIDER to complete its obligation set forth herein by the December 31st, 2028, COUNTY may invoke the penalties, if any, set forth in this document and its attachments.

II. SERVICES:

A. PROVIDER agrees to provide the services detailed in the bid specifications, if any; the request for proposals (RFP) and PROVIDER's response thereto, if any; and on the attached Schedule A, which is fully incorporated herein by reference. In the event of a conflict between or among the bid specifications, the RFP or responses thereto, or the terms of Schedule A or any of them, it is agreed that the terms of Schedule A, to the extent of any conflict, are controlling.

B. PROVIDER shall commence, carry on and complete its obligations under this Agreement with all deliberate speed and in a sound, economical and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, PROVIDER agrees to cooperate with the various departments, agencies, employees and officers of COUNTY.

C. PROVIDER agrees to secure at PROVIDER's own expense all personnel necessary to carry out PROVIDER's obligations under this Agreement. Such personnel shall not be

deemed to be employees of COUNTY nor shall they or any of them have or be deemed to have any direct contractual relationship with COUNTY.

- D. No portion of funds under this Agreement may be used to support or advance religious activities.
- E. PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin and has met all state and federal service standards, certifications and assurances as expressed by State and Federal statutes, rules, and regulations applicable to the services covered by this Agreement.
- F. PROVIDER will follow applicable public health guidelines to provide safe services and a safe workplace. In addition, by signing this Agreement, PROVIDER acknowledges the contagious nature of COVID-19 and voluntarily assumes the risk that PROVIDER and its staff may be exposed to or infected by COVID-19 by providing services under this Agreement and that such exposure or infection may result in personal injury, illness, permanent disability, and death.
- G. PROVIDER further acknowledges that PROVIDER is assuming all of the foregoing risks and accept sole responsibility for any injury to itself and staff, including, but not limited to, personal injury, disability, death, illness, damage, loss, claim, liability, or expense or any kind, that PROVIDER or its staff may experience or incur in connection with providing services. PROVIDER hereby releases, covenants not to sue, discharges, and holds harmless and indemnifies the COUNTY, its employees, agents, and representatives, of and from any and all claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. Provider understands and agrees that this release includes any claims based on the actions, omissions, or negligence of COUNTY, its employees, agents and representatives, whether a COVID-19 infection occurs before, during, or after the provision of services under this Agreement.

III. ASSIGNMENT/TRANSFER:

PROVIDER shall not assign, subcontract or transfer any interest or obligation in this Agreement, without the prior written consent of COUNTY, including the hiring of independent contract service providers unless otherwise provided herein. Claims for money due or to become due PROVIDER from COUNTY under this Agreement may be assigned to a bank, trust company or other financial institution without such approval if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to PROVIDER shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Agreement. PROVIDER shall promptly provide notice of any such assignment or transfer to COUNTY.

IV. TERMINATION:

- A. Failure of PROVIDER to fulfill any of its obligations under this Agreement in a timely manner, or violation by PROVIDER of any of the covenants or stipulations of this Agreement, shall constitute grounds for COUNTY to terminate this Agreement by giving a thirty (30) day written notice to PROVIDER.
- B. The following shall constitute grounds for immediate termination:
 - 1. violation by PROVIDER of any State, Federal or local law, or failure by PROVIDER to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations.
 - 2. failure by PROVIDER to carry applicable licenses or certifications as required by law.
 - 3. failure of PROVIDER to comply with reporting requirements contained herein.

4. inability of PROVIDER to perform the work provided for herein.
- C. Failure of the Dane County Board of Supervisors or the State or Federal Governments to appropriate sufficient funds to carry out COUNTY's obligations hereunder, shall result in automatic termination of this Agreement as of the date funds are no longer available, without notice.
- D. In the event COUNTY terminates this Agreement as provided herein, all finished and unfinished data, and the like prepared, produced or made by PROVIDER under this Agreement shall at the option of COUNTY become the property of COUNTY, and PROVIDER shall be entitled to receive just and equitable compensation, subject to any penalty, for any satisfactory work completed on such, data, or the like. Notwithstanding the above, PROVIDER shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by PROVIDER, and COUNTY may withhold any payments to PROVIDER for the purpose of offset.

V. **CONFIDENTIAL INFORMATION**

- A. Confidential Information. "Confidential Information" shall mean any and all information, technical data and related material disclosed or made available by the County to the Provider or their officers, directors, employees, subcontractors, contractors, representatives, or agents that is (a) not generally known to the public, and (b) identified as confidential, or, to a reasonable person, would be expected to be confidential due to its character and nature, including, but not limited to: financial information or projections; contract details; costs; pricing; designs, specifications and uses of products and services; product research; trade secrets; developments; inventions; processes; equipment settings; operational parameters; facilities; engineering techniques; data, know-how, or formats; software; business and strategic plans; business opportunities; employees; and other significant and valuable business information.
- B. Disclosure to Subcontractors. Provider will maintain Confidential Information in the strictest confidence and will only disclose information to the extent necessary. Prior to the limited disclosure of confidential information to subcontractors or agents, the Provider shall obtain the written agreement of such subcontractors to be bound by confidentiality.
- C. Ownership of Information. All right, title and interest in and to the Confidential Information shall be and remain vested in the County. Provider shall not be granted any license or right of any kind with respect to the Confidential Information, other than to use the Confidential Information for the limited purposes of the project or scope of services identified in this RFP.
- D. Disclosure Required by Law. If the Provider is requested or required by law (by deposition, interrogatories, Wisconsin Open Records' request, subpoenas, civil investigative demand or similar process) to disclose any Confidential Information or the existence of negotiations between the parties, the Provider shall, unless prohibited by law, promptly notify the County of such request.

VI. **PAYMENT:**

COUNTY agrees to make such payments for services rendered under this Agreement as and in the manner specified herein and in the attached Schedule B and C, which is fully incorporated herein by reference. Notwithstanding any language to the contrary in this Agreement or its attachments, COUNTY shall never be required to pay more than the sum set forth on page 1 of this Agreement under the heading MAXIMUM COST, for all services rendered by PROVIDER under this Agreement.

VII. **REPORTS:**

PROVIDER agrees to make such reports as are required in the attached schedules, which is fully incorporated herein by reference. With respect to such reports it is expressly understood that time is of the essence and that the failure of PROVIDER to comply with the time limits set forth in said schedules shall result in the penalties set forth herein.

VIII. DELIVERY OF NOTICE:

Notices, bills, invoices and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth above. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

IX. OWNERSHIP OF DOCUMENTS:

- A. All reports, drawings, specifications, renderings, models, details, and other such documents prepared by the PROVIDER or any consultant pursuant to this Agreement shall become the property of COUNTY on completion and acceptance of any of the PROVIDER's work, or upon termination of the Agreement, and shall be delivered to COUNTY upon request.
- B. Documents prepared under this Agreement may be used by COUNTY for informational purposes without additional compensation to the PROVIDER.
- C. Specifications and isolated, detail drawings inherent to the engineering design of the project, whether provided by the COUNTY or generated by the PROVIDER, shall be available for future use by the parties to this Agreement and other parties, each at their own risk.

X. INSURANCE & INDEMNIFICATION:

- A. PROVIDER shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of PROVIDER's furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. Any failure on the part of the PROVIDER to comply with reporting or other provisions of its insurance policies shall not affect this PROVIDER's obligations under this paragraph. COUNTY reserves the right, but not the obligation, to participate in defense without relieving PROVIDER of any obligation under this paragraph. The obligations of PROVIDER under this paragraph shall survive the expiration or termination of this Agreement.

- B. In order to protect itself and COUNTY, its officers, boards, commissions, agencies, agents, volunteers, employees and representatives under the indemnity provisions of the subparagraph above, PROVIDER shall, at PROVIDER's own expense, obtain and at all times during the term of this Agreement keep in full force and effect the insurance coverages, limits, and endorsements listed below. When obtaining required insurance under this Agreement and otherwise, PROVIDER agrees to preserve COUNTY's subrogation rights in all such matters that may arise that are covered by PROVIDER's insurance. Neither these requirements nor the COUNTY's review or acceptance of PROVIDER's certificates of insurance is intended to limit or qualify the liabilities or obligations assumed by the PROVIDER under this Agreement. The County expressly reserves the right to require higher or lower insurance limits where County deems necessary.

1. Commercial General Liability.

PROVIDER agrees to maintain Commercial General Liability insurance at a limit of not less than \$1,000,000 per occurrence. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent PROVIDERS and Subcontractors, and Fire Legal Liability. The policy shall not exclude Explosion, Collapse, and Underground Property Damage Liability Coverage. The policy shall cover

bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations.

2. Professional Liability Insurance.

If PROVIDER renders professional services (such as medical, architectural or engineering services) under this Agreement, then PROVIDER shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to PROVIDER's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by COUNTY

3. Commercial/Business Automobile Liability Insurance.

If applicable to the services covered by this Agreement, PROVIDER shall provide and maintain commercial general liability and automobile liability insurance at a limit of not less than \$1,000,000 per occurrence. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage (Occurrence Form CG 0001) and ISO Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

4. Environmental Impairment (Pollution) Liability

If PROVIDER will be transporting waste or will be disposing of waste or products under this Agreement, then PROVIDER agrees to maintain Environmental Impairment (Pollution) Liability insurance at a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided.

5. Workers' Compensation.

PROVIDER agrees to maintain Workers Compensation insurance at Wisconsin statutory limits.

6. Umbrella or Excess Liability.

PROVIDER may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. PROVIDER agrees to list DANE COUNTY as an "Additional Insured" on its Umbrella or Excess Liability policy.

C. Required provisions.

1. Insurer's Requirement

All of the insurance shall be provided on policy forms and through companies satisfactory to COUNTY, and shall have a minimum AM Best's rating of A- VIII

2. Additional Insured.

COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of PROVIDER; products and completed operations of PROVIDER; premises occupied or used by PROVIDER; and vehicles owned, leased, hired or borrowed by PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of COUNTY.

3. Provider's Insurance Shall be Primary

For any claims related to this Agreement, PROVIDER's insurance shall be primary insurance with respect to COUNTY, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by COUNTY, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance. PROVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability

4. Cancellation Notice

Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the PROVIDER, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to COUNTY.

5. Evidences of Insurance.

Prior to execution of the Agreement, PROVIDER shall file with COUNTY a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

6. Sub-Contractors.

In the event that PROVIDER employs sub-contractors as part of this Agreement, it shall be the PROVIDER's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

- D. The parties do hereby expressly agree that COUNTY, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this Agreement, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to COUNTY's exposure, if any, under this Agreement.

XI. MISCELLANEOUS PROVISIONS:

- A. Approvals or Inspections. None of the approvals or inspections performed by COUNTY shall be construed or implied to relieve the PROVIDER from any duty or responsibility it has for its professional performance, unless COUNTY formally assumes such responsibility in writing from COUNTY so stating that the responsibility has been assumed.
- B. Claims. The PROVIDER's project manager will meet with COUNTY's Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the COUNTY Director of Waste & Renewables for review and resolution. The decision of the Director of Waste & Renewables shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin.

XII. NO WAIVER BY PAYMENT OR ACCEPTANCE:

In no event shall the making of any payment or acceptance of any service or product required by this Agreement constitute or be construed as a waiver by COUNTY of any breach of the covenants of this Agreement or a waiver of any default of PROVIDER and the making of any such payment or acceptance of any such service or product by COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

XIII. NON-DISCRIMINATION:

During the term of this Agreement, PROVIDER agrees not to discriminate 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 against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). PROVIDER agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.

XIV. CIVIL RIGHTS COMPLIANCE:

- A. If PROVIDER has 20 or more employees and receives \$20,000 in annual contracts with COUNTY, the PROVIDER shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. PROVIDER shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of chapter 19 of the Dane County Code of Ordinances. PROVIDER shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous CALENDAR year, a plan update is acceptable. The plan may cover a two-year period. Providers who have less than twenty employees, but who receive more than \$20,000 from the COUNTY in annual contracts, may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If PROVIDER submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of PROVIDER's Plan is sufficient.
- B. PROVIDER agrees to comply with the COUNTY's civil rights compliance policies and procedures. PROVIDER agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the PROVIDER. PROVIDER agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. PROVIDER further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.
- C. PROVIDER shall post the Equal Opportunity Policy, the name of PROVIDER's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. PROVIDER shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.
- D. PROVIDER shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Officer when such announcements are issued.
- E. If PROVIDER is a government entity having its own compliance plan, PROVIDER'S plan shall govern PROVIDER's activities.

XV. COMPLIANCE WITH FAIR LABOR STANDARDS:

A. Reporting of Adverse Findings

During the term of this Agreement, PROVIDER shall report to the County Contract Compliance Officer, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations Commission (WERC) that PROVIDER has violated a statute or regulation regarding labor standards or relations. If an investigation by the Contract Compliance Officer results in a final determination that the matter adversely affects PROVIDER'S responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this agreement, the County may take such action.

B. Appeal Process

PROVIDER may appeal any adverse finding by the Contract Compliance Officer as set forth in Dane County Ordinances Sec. 25.08(20)(c) through (e).

C. Notice Requirement

PROVIDER shall post the following statement in a prominent place visible to employees: "As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing."

XVI. CONTROLLING LAW AND VENUE:

It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.

XVII. FINANCIAL INTEREST PROHIBITED:

Under s. 946.13, Wis. Stats. COUNTY employees and officials are prohibited from holding a private pecuniary interest, direct or indirect, in any public contract. By executing this Agreement, each party represents that it has no knowledge of a COUNTY employee or official involved in the making or performance of the Agreement that has a private pecuniary interest therein. It is expressly understood and agreed that any subsequent finding of a violation of s. 946.13, Wis. Stat. may result in this Agreement being voided at the discretion of the COUNTY.

XVIII. LIMITATION OF AGREEMENT:

This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

XIX. ENTIRE AGREEMENT:

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

XX. COUNTERPARTS:

The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

XXI. CONSTRUCTION:

This Agreement shall not be construed against the drafter.

XXII. COPIES VALID:

This Agreement, and any amendment or addendum relating to it, may be executed and transmitted to any other party by legible facsimile reproduction or by scanned legible electronic PDF copy, and utilized in all respects as, an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process,

and each party may at its option destroy any original document so reproduced. All parties hereto stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial, arbitration or administrative proceeding whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business. This term does not apply to the service of notices under this Agreement.

XXIII. REGISTERED AGENT:

PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so, and, if a corporation, that the name and address of PROVIDER's registered agent is as set forth opposite the heading REGISTERED AGENT on page 1 of this Agreement. PROVIDER shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and PROVIDER's legal status. For a partnership, the term 'registered agent' shall mean a general partner.

XXIV. DEBARMENT:

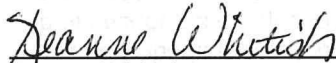
By signing this Contract, PROVIDER attests that it is not debarred from participating in federal procurements. COUNTY reserves the right to cancel this Contract if PROVIDER is presently, or is in the future, on the list of parties excluded from federal procurements.

XXV. EXECUTION:

- A. The parties agree that execution of this document may be made by electronic signatures. The parties may make electronic signatures by typing the name of the authorized signature followed by the words, "electronically signed" or by any other electronic means representing an authorized signature by PROVIDER. PROVIDER shall ensure that only authorized persons may affix electronic signatures to this Agreement and COUNTY may rely that the electronic signature provided by PROVIDER is authentic.
- B. This Agreement has no effect until signed by both parties. The submission of this Agreement to PROVIDER for examination does not constitute an offer. PROVIDER warrants that the persons executing this Agreement on its behalf are authorized to do so.

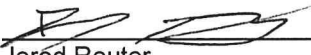
IN WITNESS WHEREOF, COUNTY and PROVIDER, by their respective authorized agents, have caused this Agreement and its Schedules to be executed, effective as of the date by which all parties hereto have affixed their respective signatures, as indicated below.

FOR PROVIDER:



Jeanne Whitish
Chief Executive Officer

12/22/2023
Date



Jerod Reuter
Chief Operating Officer

12/22/2023
Date

FOR COUNTY:

Joseph T. Parisi
Dane County Executive

Date

Scott McDonell
Dane County Clerk

Date

SCHEDULE A

Scope of Services

1. Pursuant to this Agreement, PROVIDER shall accept and manage the quantity and variety of organic materials listed in Schedule B at the PROVIDER'S Compost Facility (Facility) located at 3001 Meier Road, Madison, WI. Management of the materials shall include composting the material into marketable finished compost products, in compliance with all applicable local, state, and federal rules and regulations. Other permitted facilities, including COUNTY owned facilities, may be used for management of some or all of the materials listed in Schedule B subject to COUNTY approval. The COUNTY reserves the right to manage a portion of the materials in Schedule B at COUNTY operated and owned facilities for the purpose of pilot and research projects.
2. The intent of this contract is to divert organic materials, including food waste, from landfill disposal and convert those materials into marketable finished compost products. PROVIDER shall work in good faith with the COUNTY to expand the ability of the Facility to accept organic materials, including food waste and other compostable products. Quantities of food waste are expected to increase beyond the quantities listed as part of the annual lumpsum fee payment provided in Table 1 of Schedule B and PROVIDER agrees to continue to accept food waste at such time, at an agreed upon rate found in Schedule B. Failure to do so may result in termination of this Agreement.
3. **Contract Term**
 - A. The term of the Contract shall commence on the Effective Date and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. It is COUNTY's intention to establish a five-year contract with PROVIDER. The term will automatically renew with the same terms and conditions for one consecutive three-year term unless a party provides the other with written notice of its intent not to renew this Agreement at least 90 days prior to the expiration of the current term.

Year	Term
1 st Year	(Date of Execution) thru December 31, 2024
2 nd Year	January 1, 2025 thru December 31, 2025
3 rd Year	January 1, 2026 thru December 31, 2026
4 th Year	January 1, 2027 thru December 31, 2027
5 th Year	January 1, 2028 thru December 31, 2028

4. PROVIDER agrees to the duties as follows:
 - A. **Compost Operations**
Pursuant to this Agreement, the PROVIDER shall operate a compost facility (Facility), including the following:
 - i. Provide all personnel, equipment, and other resources necessary to process and compost the materials accepted at the facility and oversee facility operation.
 - ii. Market and sell the commodities produced by the facility.
 - iii. Meet all regulatory compliance requirements for operation of the facility.
 - B. **Permits and Compliance**
PROVIDER will comply with all permits, including any mitigation measures related to the operation and maintenance of the Compost Facility. PROVIDER is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits. Under no circumstances shall any provision of this Agreement obligate PROVIDER to violate any of its Permits.

- i. PROVIDER is responsible for applying for a ">20,000 cubic yards Yard Residuals or > 5,000 cubic yards Source-Separated Compostable Material" composting permit if at such time that would be required for continued operation and commitment to this scope of services. COUNTY will aid in this application but will not be responsible for its submittal or maintenance.

C. Reporting Requirements for WDNR

PROVIDER will comply with all Wisconsin Department of Natural Resources (WDNR) reporting requirements. COUNTY shall be notified within 1 business day of any violations received from WDNR. A copy of all regulatory reports shall be submitted to the COUNTY concurrently with WDNR submittal.

D. Reporting Requirements for County of Dane

PROVIDER shall prepare and submit monthly status reports to COUNTY to quantify the monthly inbound and outbound materials subject to this Agreement to demonstrate that materials subject to this Agreement are successfully composted and contribute to marketable finished compost. The monthly status report shall also include:

- i. Volume of inbound material, separated by type and source (i.e. X yards of food waste from Dane County Landfill, etc.)
 - a. The exception to tracking inbound material will be Leaves from the City of Madison
- ii. Count of loads, source of loads, and size of loads dropped off on behalf of this Agreement
- iii. Estimated volume of Dane County material that finished composting and moved off site or to next stage of process
- iv. Estimated volume of contamination, if any, removed from final compost
- v. Any amount of material sent to landfill
- vi. Other relative information from operations, such as neighborhood complaints, contamination issues, operational issues regarding Dane County material, etc.
- vii. If there is a regulatory violation at the Facility, PROVIDER must inform the COUNTY within 3 business days.

E. Load Inspection and Load Rejection

PROVIDER will develop load inspection and rejection procedures and submit to the COUNTY for approval. Contamination will be assessed visually by PROVIDER and a load may be rejected within 24 hours of delivery if 10% visual contamination or higher is observed or if a load contains any amount of materials that would jeopardize site licenses. PROVIDER will notify COUNTY of any rejected material that is subject to this Agreement within 24 hours of delivery and provide photo documentation, the source or the material, and specific items of contamination observed.

- i. Contamination for this Agreement is defined as non-organic derived materials such as plastics, metals, textiles, and other non-degradable material or any item not listed as accepted per PROVIDER guidance.

F. Disposal of Rejected Loads

PROVIDER may dispose of up to 5 tons, or up to 5% of total food waste received as part of this Agreement annually, whichever is greater, as rejected food waste due to contamination, at no cost at the COUNTY's permitted solid waste facility each year. Any material subject to this Agreement that is rejected for contamination must be disposed of at the Dane County Landfill.

- i. PROVIDER will follow pre-screening best practices with due diligence, as to not create a compounding issue of contamination in final products.

G. Operational Expenses

PROVIDER will pay for utilities, fuel, and all other operational expenses necessary to manage the materials subject to this Agreement.

H. Facility Hours of Operation

Deliveries of materials subject this Agreement shall be accepted at the Compost Facility between the hours of 7:30 a.m. to 4:30 p.m., Monday through Friday. Exceptions will be allowed for access outside of these hours if agreed upon by PROVIDER.

- i. PROVIDER shall also allow access to the Facility for the delivery of yard waste outside of the hours listed above, and on weekends, and provide a means of access, such as a key, to COUNTY or staff dedicated by COUNTY for such purposes.

I. Traffic Control and Direction

PROVIDER will be responsible for on-site traffic to appropriate unloading areas and provide a safe working environment. PROVIDER will provide necessary signs and personnel to assist drivers to proper unloading areas. PROVIDER will operate facility so that the conditions of the maximum vehicle turnaround are met and hauler vehicles are processed, unloaded and exit without unreasonable delay from the facility. The site will allow load drop-off from self-ejecting vehicles up to 40-feet in size.

J. Bunker Design and Installation

A bunker for the mixing, preconditioning, and inspection of food waste shall be constructed at the Facility no later than August 1, 2024. PROVIDER will submit the design and anticipated capacity/throughput to the County for approval prior to commencement of construction and no later than April 1, 2024. PROVIDER shall obtain and/or contract all permits, engineering, materials and contractors necessary to construct the bunker. COUNTY will reimburse the PROVIDER up to a total of \$75,000 for the design, permitting, and construction of the bunker. If Agreement is terminated prior to five-year timeline, PROVIDER will repay the COUNTY for investment of the bunker in either cash or equivalent tipping fee credit, prorated for years remaining on the contract at time of termination.

K. Safety

PROVIDER shall conduct operations in a safe manner with Applicable Law and insurance requirements provided in this Agreement.

L. Right to Enter Facility and Observe Operations

COUNTY and its designated representative(s) may enter, observe and inspect the Facility; conduct studies or surveys of the facility; or meet with the manager(s) or his or her representatives; provided that the COUNTY and its representatives comply with PROVIDER'S reasonable safety and security rules and will not interfere with the work of the PROVIDER, and provide 24 hours' notice. Upon COUNTY direction, PROVIDER will make personnel available to accompany COUNTY employees on inspections. PROVIDER will ensure that its employees cooperate with the COUNTY and respond to the COUNTY's reasonable inquiries.

M. Education & Outreach

PROVIDER will provide input on development of education and outreach materials around composting and accepted materials at facility.

N. Sale & Marketing of Finished Product Operational Expenses

PROVIDER will be responsible for sale, shipping, trucking, and marketing of finished product. COUNTY retains the right to purchase up to 3,000 yards of finished compost from PROVIDER at \$30.75 per cubic yard. This price is set until December 31, 2026 at which point the PROVIDER may request that the rates be increased by the All Urban Consumer- Minneapolis-St. Paul, Minnesota-Wisconsin CPI for each year after 2026.

5. COUNTY agrees to the duties as follows,

A. Equipment Procurement

COUNTY will provide equipment equivalent to a Case 321 Frontend Loader and Case 821 bucket no later than August 1, 2024. Equipment will be leased from the COUNTY by the PROVIDER as outlined in Schedule D.

B. Scale Procurement

COUNTY retains the right to pursue installation of an industrial scale, which would be procured and installed by the COUNTY while PROVIDER would be responsible for providing access to utilities and a useable area on site. PROVIDER and COUNTY will agree on staffing requirements of a scale at such a time it is deemed necessary to install. Ownership of the scale would remain with the COUNTY.

C. Inspection of materials collected at County site's

COUNTY will inspect materials collected at Dane County Landfill or County satellite locations and confirm conformance with maximum contamination limits prior to transportation to PROVIDER's Facility.

D. Delivery

Organic materials subject to this Agreement will be delivered to 3001 Meier Road, Madison, WI. Delivery at an alternative site may be renegotiated between PROVIDER and COUNTY.

E. Education & Outreach

COUNTY will organize an education committee with representatives from organics recycling interest groups in Dane County to align on "feedstock acceptance" messaging. COUNTY will produce and disseminate these educational materials.

6. Material Generator Interactions and Growth

A. COUNTY will either directly contract payment, tipping fee, and hauling agreements or initiate a separate three-party agreement for materials delivered to PROVIDER as part of this Agreement. The COUNTY will reconcile monthly status reports according to the lumpsum and adjust with tipping fees outlined in Schedule B.

B. COUNTY will be responsible for billing of material generators in relation to all materials counted towards Schedule B Table 1.

C. PROVIDER will have first right of refusal on municipal leaf, brush, and yard waste contracts, with the exception of the City of Madison.

D. COUNTY will have first right of refusal on food waste contracts and will be responsible for food waste program growth.

E. Organic materials, that are not listed in Schedule B Table 1, such as lake weeds or other organic materials, may be composted on-site in experimental and pilot quantities, with express planning and agreement by COUNTY and PROVIDER.

7. Ownership of Materials

A. Materials outlined in Schedule B Table 1 are under rights and responsibility of the COUNTY to procure and to arrange transport until such time they are delivered to PROVIDER, unless otherwise specified by separate third-party agreement. At point of delivery, all materials become the rights and responsibility of the PROVIDER.

B. All final product materials and residuals of composted materials for sale and distribution are the rights and responsibility of the PROVIDER.

- C. COUNTY shall maintain ownership of any Carbon Credits associated with this Work and Agreement. As used herein, "Carbon Credits" means (a) any carbon offset, any carbon sequestration, or any carbon utilization credits or certificates, emission reduction credits, emission allowances, green tags, tradable renewable credits or Green-e products related to carbon markets; and (b) any other carbon market-based benefit and resource. Any distribution or allocation of Carbon Credits shall be done outside of this Agreement and done solely by the COUNTY. Nothing in the Agreement shall commit PROVIDER to assigning or transferring tax or investment credits to the COUNTY.

SCHEDULE B Materials and Payment

Table 1

MATERIALS	TONNAGE INCLUDED IN ANNUAL BASE FEE	UNIT RATE FOR ADDITIONAL TONNAGE
Leaves and yard waste <ul style="list-style-type: none"> - Leaves - Grass Clippings - Flowers - Plant and Garden Debris - Twigs <18" length - Allowance for compostable paper bags 	-All leaf and yard waste from normal collections by the City of Madison (17,3000 tons approximate, loads not measured by PROVIDER and if City of Madison material grows beyond reason, it will be the responsibility of the PROVIDER to discuss with COUNTY)	\$0.00/ton
Leaves and yard waste, as defined as above	-Up to 1,000 tons from other municipal or County drop-off locations (including Dane County Landfill). COUNTY shall provide PROVIDER with a list of haulers and/or customers who are approved by the County to deposit material at the Facility under this contract.	\$0.00/ton Additional fee of \$15/ton only paid at time that listed sources and amounts are surpassed per annum
Food Waste including: <ul style="list-style-type: none"> - Fruit - Vegetable - Grain - Coffee ground - Tea leaves - Egg Shells - Non-liquid dairy - Meat - Bones 	-Up to 600 tons of food waste, pre-consumer or post-consumer that is sourced from within Dane County. COUNTY shall provide PROVIDER with a list of haulers and/or customers who are approved by the County to deposit material at the Facility under this contract.	\$0.00/ton for listed sources and amounts Additional fee of \$27/ton only paid at time that listed sources and amounts are surpassed per annum
Manure	-Up to 100 tons of herbivore manure and bedding from Dane County Henry Vilas Zoo, Alliant Energy Center, or similar COUNTY affiliated source	\$0.00/ton for listed sources and amounts Additional fee of \$27/ton only paid at time that listed sources and amounts are surpassed per annum
Brush & Logs (≤6 inches Diameter)	- Up to 2,000 tons of brush from COUNTY Facilities	\$0.00/ton for listed sources and amounts Additional fee of \$15/ton only paid at time that listed sources and amounts are surpassed per annum
Compostable bags and consumer products	- Pilot quantities	\$0.00/ton

Table 2

Timeline	Summary of Material Acceptance	Payment to PROVIDER ⁽¹⁾	COUNTY Capital Expenditures
2024	Initial food waste program startup with acceptance of up to 2,000 pounds per month after August 1, 2024	\$2,000	Up to \$75,000 for bunker
2025	Acceptance of Schedule B Table 1 Materials	\$220,000 + Tipping Fees for material that exceeds contracted amount (est. \$10,000)	
2026	Acceptance of Schedule B Table 1 Materials	\$220,000 + Tipping Fees for material that exceeds contracted amount (est. \$10,000)	
2027	Acceptance of Schedule B Table 1 Materials	\$220,000 + Tipping Fees for material that exceeds contracted amount (est. \$10,000)	
2028	Acceptance of Schedule B Table 1 Materials	\$220,000 + Tipping Fees for material that exceeds contracted amount (est. \$10,000)	

⁽¹⁾ After December 31, 2026 annual lumpsum payment and unit rates subject to CPI increase, up to 3%. Any increase must have written justification by PROVIDER and be approved by COUNTY

SCHEDULE C

Payment

1. Invoicing

- A. PROVIDER shall issue a quarterly invoice to the COUNTY for annual services at agreed upon lumpsum amount included in Schedule B. PROVIDER shall issue an invoice to the COUNTY quarterly for additional tonnages at agreed upon rates. Invoices must reference the COUNTY purchase order number issued for the services/deliverables described herein. Invoices shall be sent to COUNTY electronically at invoices-waste@countyofdane.com.

2. Payment Terms

- A. Payment shall be made within 90 days of COUNTY's receipt of accepted invoice unless otherwise agreed to in writing by PROVIDER. COUNTY shall pay PROVIDER directly.

3. Compensation

- A. COUNTY will compensate PROVIDER for the services outlined in Schedule A and quantities and materials listed in Schedule B through lumpsum.
- B. For quantities for food waste material and manure that exceed the lumpsum amounts listed in Schedule B Table 1, the PROVIDER shall be compensated \$27 per ton for food waste materials and manure delivered to compost facility over the agreed upon amount.
- C. PROVIDER shall be compensated \$15 per ton for organics material, other than food waste and manure, delivered to compost facility over the lumpsum quantities listed in Schedule B Table 1.
- D. PROVIDER shall maintain rates until December 31, 2026 at which point the PROVIDER may request that the rates be increased by the All Urban Consumer- Minneapolis-St. Paul, Minnesota-Wisconsin CPI for each year after 2026; limited to 3%, have written justification by PROVIDER, and must obtain COUNTY approval.

4. Equipment

- A. COUNTY will lease equipment in for the purpose of managing material through this Agreement as outlined in Schedule D.

5. Site Improvements

- A. COUNTY will provide reimbursement for on-site improvements for a concrete bunker for the purpose of mixing and preconditioning food waste, up to the amount of \$75,000. PROVIDER will select location on their site for bunker installation. PROVIDER shall select contractor to install bunker. If Agreement is terminated prior to five-year timeline, PROVIDER will repay the COUNTY for investment of the bunker in either cash or equivalent tipping fee credit, prorated for years remaining on the contract at time of termination.

6. Accounting Records

- A. Records of the PROVIDER's direct personnel, consultants, and reimbursable expenses pertaining to the project shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and shall be available to COUNTY or an authorized representative throughout the term of this Agreement and for at least three (3) years after final payment to the PROVIDER.

SCHEDULE D Equipment Lease

This equipment lease ("Lease") is made and effective, by and between, Dane County, Wisconsin, a quasi-municipal corporation with offices at 1919 Alliant Energy Center War, Madison, WI 53713 (the "Lessor") and Purple Cow Organics LLC, a Wisconsin Corporation with primary offices at 5935 County Hwy K, Waunakee, WI 53597 (the "Lessee"). Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, certain tangible personal property.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. Lease: Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the equipment that is described in Schedule A.
2. Term: The term of this lease shall commence upon the purchase of the equipment listed in Schedule A, which will occur no later than August 1, 2024, unless reasonably delayed by constraints outside the control of the Lessor and Lessee. The term will expire on December 31st, 2028 or such a time the Agreement above is prematurely ended.
3. Rent: The yearly rent shall be paid in installments of \$1 per year. The Lessor shall invoice the Lessee annually for the rent.
4. Use: Lessee shall use the equipment in a careful and proper manner and shall comply with and conform to all federal, state, and local laws, ordinances and regulations in any way relating to the possession, use or maintenance of the equipment. The equipment shall be used solely at the facility at 3001 Meier Road, Madison, WI.
5. Maintenance and Repairs: Lessee shall keep the equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the equipment in good mechanical working order. All maintenance shall be conducted in accordance with equipment manufacturer's specifications and recommendations. Lessee shall keep records of maintenance performed.
6. Loss and Damage: Lessee hereby assumes and shall bear the entire risks of loss and damage to the equipment due to their negligence. No loss or damage to the equipment or any part thereof shall impair any obligation of Lessee under this Lease or the Agreement, which shall continue in full force and effect through their term. In the event of loss or damage of any kind whatsoever to the equipment due to their operations, Lessee shall, at Lessor's option place the same in good repair, condition and working order; or replace the same with like equipment in good repair, condition and working order; or pay the Lessor the replacement costs of the equipment. In the event of loss or damage of any kind whatsoever to the equipment not due to Lessee negligence, Lessor shall, at Lessor's option, place the same in good repair, condition and working; or replace the same with like equipment in good repair, condition and working order.
7. Surrender: Upon the expiration or earlier termination of this Lease, Lessee shall return the equipment to Lessor in good repair, condition and working order; ordinary wear and tear resulting from proper use thereof alone excepted.

8. Insurance: During the term of the Lease, Lessee shall maintain Commercial General Liability Insurance including coverage for bodily injury, death and property damage with a limit of liability of not less than \$1,000,000 for each occurrence and in the annual aggregate. Insurance provided will be primary. Lessee shall maintain said insurance with an insurer that is authorized to do business in the State of Wisconsin and has an A-AM Best rating or better. During the term of the Lease, upon request from the Lessor, Lessee shall annually furnish the Lessor with certificates of insurance evidencing that the insurance required hereunder is in full force and effect. Lessee shall send Lessor written notice of cancellation or any material change in the coverage provided at least ten days in advance of the effective date of the cancellation or change. If insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the effective date of this Lease and the certification of insurance shall state the coverage is claims-made and indicate the retroactive date.
9. Indemnification, and Hold Harmless: Lessee shall indemnify, hold harmless and defend Lessor from and against all claims for losses, costs, attorney fees, expenses and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, where such loss, damage, injury or death actually or allegedly arises, whether directly or indirectly, wholly or in part, from Lessee's use of the equipment. Lessee shall be responsible for cost of repairs to Lessor facilities due to negligent operation of equipment by Lessee.
10. Taxes: Lessee shall keep the equipment free and clear of all levies, liens and encumbrances. Lessor shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts, taxes arising out of receipts from use or operation of the equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing, together with any penalties or interest thereon, imposed by the federal, state or local government.
11. Termination: This Lease may be terminated as set forth in the above Agreement.
12. Ownership: The equipment is, and shall at all times be and remain, the sole and exclusive property of Lessor; and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.
13. Assignment: Lessee shall not assign this Lease or its interest in the equipment without prior written consent of Lessor.
14. Entire Agreement: The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.
15. Counterparts: The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.
16. Construction: This Agreement shall not be construed against the drafter.