

Res 59

# Contract Cover Sheet

*Note: Shaded areas are for County Executive review.*

Department <b>Land &amp; Water Resources</b>	Contract/Addendum #: <b>13008</b>																				
1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">Contract</th> <th style="width: 50%;">Addendum</th> </tr> <tr> <td colspan="2" style="text-align: center; font-size: small;">If Addendum, please include original contract number</td> </tr> <tr> <td><input type="checkbox"/> POS</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Grant</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input checked="" type="checkbox"/> Co Lease</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Co Lessor</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Intergovernmental</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Purchase of Property</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Property Sale</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Other</td> <td><input type="checkbox"/></td> </tr> </table>	Contract	Addendum	If Addendum, please include original contract number		<input type="checkbox"/> POS	<input type="checkbox"/>	<input type="checkbox"/> Grant	<input type="checkbox"/>	<input checked="" type="checkbox"/> Co Lease	<input type="checkbox"/>	<input type="checkbox"/> Co Lessor	<input type="checkbox"/>	<input type="checkbox"/> Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/> Purchase of Property	<input type="checkbox"/>	<input type="checkbox"/> Property Sale	<input type="checkbox"/>	<input type="checkbox"/> Other	<input type="checkbox"/>
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<input type="checkbox"/> Other	<input type="checkbox"/>																				
2. This contract is discretionary <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																					
3. Term of Contract or Addendum: <b>3/23/17-12/31/27</b>																					
4. Amount of Contract or Addendum: <b>0</b>																					
5. Purpose: This Nutrient Concentration System Construction, Interconnection and Operation Agreement and Ground Sublease with GL Dairy Biogas, LLC allows for the addition and operation of a nutrient concentration system at the digester located in the Town of Springfield.																					
6. Vendor or Funding Source: <b>GL Dairy Biogas, LLC</b>																					
7. MUNIS Vendor Code: <b>23466</b>																					
8. Bid/RFP Number: N/A																					
9. If grant: Funds Positions? <input type="checkbox"/> Yes <input type="checkbox"/> No Will require on-going or matching funds? <input type="checkbox"/> Yes <input type="checkbox"/> No																					
10. Are funds included in the budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>N/A</b>																					
11. Account No. & Amount, Org & Obj. <u>LWLEGACY 57308</u> Amount \$ <u>1.00/year</u> Account No. & Amount, Org & Obj. _____ Amount \$ _____ Account No. & Amount, Org & Obj. _____ Amount \$ _____																					
12. If this contract awards funds, a purchase requisition is necessary. Enter requisition # & year _____																					
13. Is a resolution needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption _____																					
14. Does Domestic Partner equal benefits requirement apply? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																					
15. Director's Approval: <b>Kai Conroy</b>																					

Contract Review/Approvals				Vendor
Initials	Ftnt	Date In	Date Out	Vendor Name
<b>mg</b> Received	_____	<b>3/7/17</b>	_____	GL Dairy Biogas, LLC
<b>aw</b> Controller	_____	_____	<b>3/7/17</b>	Contact Person
<b>aj</b> Corporation Counsel	_____	<b>3/7/17</b>	_____	Jeff Rich
<b>st</b> Risk Management	_____	<b>3/8/17</b>	<b>3/8/17</b>	Phone No.
<b>Coc</b> Purchasing	_____	<b>3/7/17</b>	<b>3/7/17</b>	(608) 775-6970
_____ County Executive	_____	_____	_____	E-mail Address
				JJRich@gundersenhealth.org

**Footnotes:**  
 1.  
 2.


<b>Return to:</b> Name/Title: Kevin Connors Phone: 608-224-3731 E-mail Address: connors.kevin@countyofdane.com	<b>Dept.:</b> Land & Water Resources <b>Mail Address:</b> 5210 Fen Oak Drive, #208 Madison, WI 53718
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## Certification

The attached contract: *[check as many as apply]*

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

Date: March 7, 2017

Signed: 

Telephone Number 608-224-3731

Print Name: Kevin Conkors

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

**Executive Summary** (attach additional pages, if needed).

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

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

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

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

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

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

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

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

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

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

NUTRIENT CONCENTRATION SYSTEM  
CONSTRUCTION, INTERCONNECTION AND OPERATION AGREEMENT

This Agreement is entered into by and between GL Dairy Biogas, LLC ("GLDB") and the County of Dane ("County"). GLDB and County may be collectively referred to as "Parties."

WHEREAS County and GLDB entered into a Digester Development and Operation Agreement, Facility Lease, Equipment Lease, and Ground Lease on May 6, 2013 for the development, construction and operation of an anaerobic digester project in the Town of Springfield; and

WHEREAS GLDB has agreed to the addition and interconnection of a Nutrient Concentration System ("NCS") to the project at no cost to GLDB; and

WHEREAS County has contracted for the construction and operation of the NCS system on the project site.

NOW THEREFORE, the Parties, for mutual consideration contained herein, agree as follows:

GENERAL TERMS

1. This Agreement is contingent upon issuance of a revised permit to GLDB by the Wisconsin Department of Natural Resources for operation of the digester pursuant to the Request of Permit Modification submitted December 13, 2016. The initial term of the Agreement shall be effective on the date of issuance of said revised permit and extends for ten (10) years from the effective date. After the initial term, this Agreement shall automatically renew for subsequent two (2) year terms unless written notice of non-renewal is provided by either party, ninety (90) days prior to renewal..
2. The NCS shall be located in a building to be constructed at no cost to GLDB adjacent to the existing solids building that is accessible to the centrate tank. The location of the building is depicted on the drawing attached as Exhibit A. A separate sublease agreement between the parties shall be executed regarding this space.
3. The NCS shall be connected to the pumping, piping, storage, and separation equipment, lagoon, and control systems of the anaerobic digester, and shall remain physically connected for the term of this Agreement unless mutually agreed by the parties. County shall provide GLDB with its plans for interconnection for approval prior to commencement of any construction or interconnection. Responsibility for the effluent stream transfers from GLDB to County at the flange connection immediately downstream of GLDB centrifuge and responsibility transfers back from County to GLDB after passing through the

flange prior to entering the lagoon. Temporary disconnection is authorized if necessary for repairs, digester operations, or an event jeopardizing public health, safety or welfare.

4. A discharge pipe to Pheasant Branch Creek shall be constructed on the project site. If it is determined that an easement is necessary for installation and access to these areas, the parties agree to execute all necessary documentation.
5. County will be responsible for all expenses associated with the construction and operation of the NCS.
6. County and its contractors are granted reasonable right of ingress and egress and access to the Project Site, as that term is defined in the Ground Sublease between the Parties and depicted in Exhibit A, to construct and operate the NCS. No other visitors or guests are permitted to access the Leased Premises without advanced consent from GLDB, such consent shall not be unreasonably withheld. County's contractors shall not enter other areas of the project without prior approval from GLDB. If access to areas outside the Leased Premises, as that term is defined in the Ground Sublease between the Parties, is necessary, GLDB will grant reasonable requests upon prior notice.
7. County may remove the NCS from the project site at any time. If the NCS ceases to operate and it is determined that it cannot be repaired, the County will provide written notice to GLDB and this Agreement shall terminate. County will then decommission the Project Site in accordance with Section 10 of this Agreement
8. Notices. Notices hereunder shall be sufficient and effective as of the date of post mark if sent by regular mail, postage prepaid, or the date emailed and addressed to:

LESSEE: County of Dane  
Department of Administration  
Room 425, City-County Building  
210 Martin Luther King, Jr., Blvd.  
Madison, WI 53703

LESSOR: GL Dairy Biogas, LLC  
1900 South Avenue  
La Crosse, WI 54601  
Email: [CJZareck@gundersenhealth.org](mailto:CJZareck@gundersenhealth.org) and  
[JJRich@gundersenhealth.org](mailto:JJRich@gundersenhealth.org)

With a copy to  
Gundersen Health System  
1900 South Avenue

La Crosse, WI 54601  
Attention: Legal Department  
Email: [JHklock1@gundersenhealth.org](mailto:JHklock1@gundersenhealth.org)

## 9. Termination

(a) The occurrence of any of the following will constitute an "Event of Default" for the purposes of this Agreement:

- i. Failure to abide by any terms, conditions, covenants, or warranties as described in this Sublease and whereby such default were to continue for a period of forty-five (45) days after the non-defaulting Party has given notice to the defaulting Party specifying in reasonable detail such default and demanding the same to be remedied. If the default cannot be remedied, the non-defaulting Party immediately may pursue any remedies available;
- ii. Failure to obtain any approval from GLDB as required in this Agreement;
- iii. The NCS ceases to operate for six (6) consecutive months;
- iv. Termination of the Ground Sublease; or
- v. Termination of the Digester, Development, and Operations Agreement

(b) Remedies. Upon the occurrence of an Event of Default the Parties hereto have the following remedies:

- i. The non-defaulting Party shall have the right (but not the obligation) to take such reasonable action as is necessary to cure the default, subject to all applicable cure periods.
- ii. The non-defaulting Party shall have the right to all damages authorized by law suffered as a result of such Event of Default.
- iii. The non-defaulting Party shall have the right (but not the obligation) to terminate this agreement immediately upon written notice following the expiration of any applicable cure period.

(c) No acceptance by Lessor of rents, fees, charges or other payments, or waiver by Lessor of any default on the part of the Lessee in the performance hereunder shall act as a waiver of Lessor or any subsequent default or of any right granted Lessor herein.

10. Effect of Termination. In the event of termination of this Sublease, Lessee shall decommission the site by removing all Lessee Improvements from the Leased Premises within twelve (12) months of the date of termination. Lessor and Lessee shall cooperate on a schedule for decommission the site and all decommissioning activities shall take place with a representative from both Parties present. Lessor shall have the right to waive any aspect of decommissioning. The County shall be responsible for all costs associated with removal of the equipment from the project site.

11. Insurance. The parties agree that all the insurance requirements of County set forth in the Digester Development and Operation Agreement, Facility Lease, Equipment Lease and Ground Lease shall apply to this Agreement. Additionally, the County agrees to, at County's expense, add all equipment and improvements associated with the Digester project to its property insurance policy. The County further agrees that as a part of any operation and/or lease agreement with any third-party operator or lessee of the NCS, the County shall require the third-party operator or lessee to carry at least the following insurance coverage/limits during the term of this Agreement. Such third-party insurance policy shall name GLDB as an additionally insured. The County and third-party operator shall annually during the term of this agreement furnish GLDB with certificates of insurance evidencing that the insurance required hereunder is in full force and effect.

<u>Coverage</u>	<u>Occurrence/Aggregate</u>
Excess Liability	To a total per occurrence and aggregate of \$5 million
Comprehensive General Liability	\$1 million
Automobile Liability	\$1 million
Worker's Compensation/Employers Liability	Statutory
Pollution Liability	\$1 million per occurrence and \$2 Million aggregate

12. Indemnification.

a. GLDB Indemnity. GLDB shall indemnify, hold harmless and defend County from and against all claims, losses, cause of action, costs, attorney fees, expenses and damages (the "Claims") arising out of, resulting from or relating to (i) the negligence or willful actions or omissions of GLDB, GLDB's employees, agents, contractors, suppliers, invitees, sublessees or guests; or (ii) GLDB's breach of the terms of this Agreement; provided, however, that GLDB shall not be required to indemnify or hold harmless County to the extent County's negligence or willful acts or omissions contributed to the Claims.

- i. County Notice of Indemnity. County shall provide GLDB notice of Claims for which County may seek indemnification with reasonable promptness and GLDB shall defend such claims by counsel of its own choosing at GLDB's expense. County shall cooperate fully in all respects with GLDB in any such defense; including, without limitation by making available to GLDB all pertinent information under the control County. If County elects to defend a claim, County may, at its expense, participate in such matter with counsel of County's own choosing.
- b. County Indemnity. GLDB shall not be liable to County or County's successors, assigns, employees, agents, patrons, or invitees, or any person whomsoever, for any injury or death of any person or damage to property caused by or arising as a result of the negligence of County, its employees or agents, or of any other person entering upon the Project Site under express or implied invitation of the County. County agrees to indemnify, defend and hold GLDB harmless from and against all Claims arising out of, resulting from or relating to (i) the negligence or willful acts or omissions of County, County's employees, agents, contractors, suppliers, invitees, sublessees or guests or (ii) County's breach of the terms of this Agreement; provided however, that County shall not be required to indemnify or hold harmless GLDB to the extent GLDB's negligence or willful acts or omissions contributed to the Claims.
  - i. GLDB Notice of Indemnity. GLDB shall provide County notice of any Claims for which GLDB may seek indemnification with reasonable promptness and County shall defend such claims by counsel of its own choosing, at County's expense. GLDB shall cooperate fully in all respects with County in any such defense, including without limitation, by making available to County all pertinent information under the control of GLDB. If GLDB elects to defend a claim, GLDB may, at GLDB's expense, participate in such matter with counsel of GLDB's own choosing.

13. Limitations and Reimbursement.

- a. If the value of any claim arising under Section 12(b) which shall be covered by an applicable insurance policy exceeds the coverage and policy limits of any applicable insurance policy from which reimbursement of such claim is taken, the amount which exceeds the coverage and policy limits shall be submitted for reimbursement in accordance with Section 13(b).
- b. For any claim which does not arise from acts or omission as described in Section 12(b), or is not otherwise covered by this agreement, a claim may be submitted by GLDB to the County under the procedures set forth in Wis. Stat. §893.80.

## CONSTRUCTION

14. GLDB understands that County shall hire contractors for the construction and operation of the NCS. County agrees that it shall not hire CG Schmidt or any of its affiliates to perform any activities, including but not limited to construction, operation, or consulting in relation to the NCS.
15. GLDB shall have the opportunity to review and approve all plans relating to construction of the NCS building and interconnection between the NCS and digester including but not limited to; final NCS building drawings, automation controls and control logic, exterior building details, discharge pipes, and all utility connections. GLDB shall have 30 days from submission to review said plans and approval by GLDB shall not unreasonably be withheld. If GLDB provides notice to the County that it disapproves of the plans submitted, such notice of disapproval must provide the reason or reasons for such disapproval. County shall not begin any construction or interconnection activities until GLDB has approved the applicable design drawings or plans.
16. County and its contractors shall not interfere with digester operations. If interference with digester operations is necessary for construction of the NCS, advance notification and approval from GLDB is required so GLDB can coordinate with the NCS team.
17. During construction, County contractors shall use portable lavatory facilities provided by the County.
18. County shall have the right to install any necessary additional utility services needed for the construction and operation of the NCS so long as it does not interfere with GLDB operations. County shall be responsible for all costs associated with said installation and all utility bills.

## INTERCONNECTION AND OPERATION

19. The County shall be responsible for all interconnection costs including but not limited to modifications, bypass automation, upgrades, repairs, and equipment needed for interconnection and monitoring between the NCS and digester. These items will be implemented prior to the start of NCS operations.
20. County warrants that neither the NCS nor the actions of County or its Contractors will negatively impact GLDB, its digester, its digester operations or cause non-compliance with any of GLDB's regulatory permits.



21. GLDB agrees to provide available effluent that has passed through the separation equipment from the digester to the NCS. GLDB makes no warranty or representation as to the condition or quality of the effluent coming out of the digester or off the separation equipment and County agrees to accept the effluent "as is." Nothing in this paragraph shall prohibit GLDB from inserting before the interconnection between the digester and the NCS any additional technologies that may improve phosphorus removal and compliance with Department of Natural Resource permits, or provide additional economic benefit to GLDB. GLDB may by-pass the NCS in case of emergency or if reasonably necessary for maintenance, operations, or if the NCS is negatively impacting permit compliance. GLDB will notify NCS operator of any by-pass of the NCS.
22. County does not have authority to shutdown or modify the GLDB digester operations without prior approval from GLDB. GLDB will not unreasonably withhold approval of reasonable requests for maintenance and other purposes upon prior notice.
23. GLDB shall have access to the NCS building and authority to shut down the NCS in an emergency. GLDB will be granted reasonable access to the NCS building upon notice and approval by the County.
24. County shall have access to the GLDB site in an emergency. County may be granted reasonable access to the GLDB site upon prior notice and approval by the GLDB operator.
25. Neither party or its contractors will have access to the SCADA controls and program logic of the other party's system. The NCS and the digester will have separate control systems. The two systems will be interconnected for integrated communications. Any modifications to NCS interconnection control logic will be reviewed and approved by GLDB prior to modification.
26. The County and NCS operator will have an Emergency Action Plan in place prior to the start of operations.
27. GLDB may in its sole discretion allow reasonable modifications to its WPDES permit, at County's sole expense, to allow the transfer for the centrate to the new project and the return of the nutrient stream to the lagoon for storage. County will reasonably support GLDB's efforts to modify its WPDES permit.

#### MISCELLANEOUS

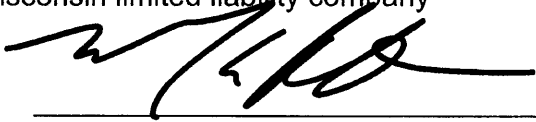
28. It is expressly understood and agreed to by the Parties hereto that in the event of any disagreement or controversy between the Parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in Dane County Circuit Court.

29. Except as permitted or provided for herein, neither Party shall assign this Agreement without prior written consent of the other Party hereto, provided that either Party may assign its interest in this Agreement to a subsidiary or affiliate or in connection with an asset or stock sale or merger, consolidation, or transfer of assets.
30. 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.
31. 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.
32. The Parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both Parties, provided to the extent any exhibit is not available on the Effective Date, the Parties agree to attach missing exhibits to this Agreement as those exhibits become available and are approved by GLDB.

*[Signature page to immediately follow]*

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

GL DAIRY BIOGAS, LLC,  
a Wisconsin limited liability company

By:  \_\_\_\_\_

Date: 3-2-17

Name: Mark Platt

Title: Sr. Vice President, Business Services

COUNTY OF DANE,  
a Wisconsin county and body corporate pursuant to Chapter 59 of the Wisconsin Statutes

\_\_\_\_\_  
Joe Parisi, County Executive

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

\_\_\_\_\_  
Scott McDonell, County Clerk

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



## GROUND SUBLEASE

### NUTRIENT CONCENTRATION SYSTEM PROJECT

This sublease (the "Sublease") is made and entered into by and between GL Dairy Biogas, LLC, a limited liability company organized under the laws of the State of Wisconsin (hereinafter, "Lessor") and the County of Dane, Wisconsin, a Wisconsin quasi-municipal corporation (hereinafter, "Lessee"). Lessor and Lessee may be hereinafter referred to as "Parties" or individually as a "Party."

#### WITNESSETH:

WHEREAS, Lessor is currently tenant pursuant to a Ground Lease of land executed between the County of Dane and GL Dairy Biogas in the Town of Springfield, Dane County, Wisconsin, which is legally described on Exhibit A, attached hereto (the "Land"); and

WHEREAS Lessee and Lessor entered into a Digester Development and Operation Agreement, Facility Lease, and Equipment Lease on May 6, 2013 for the development, construction and operation of an anaerobic digester project in the Town of Springfield (the "Digester"); and

WHEREAS, the Land is appropriate for the construction, installation and operation of a nutrient concentration system (the "Project") which shall be connected to the Digester pursuant to the NCS Interconnection Agreement,

WHEREAS, Lessee will construct improvements related to the Project on a portion of the Land, which is described on Exhibit B (collectively, the "Project Site").

WHEREAS, Lessor and Lessee have also entered into a Nutrient Concentration System Construction, Interconnection and Operation Agreement (the "NCS Interconnection Agreement");

WHEREAS, Lessee has entered into an Equipment Lease with Springfield Clean Water, LLC, to lease and operate the Project (the "NCS Equipment Lease").

NOW THEREFORE, in consideration of the above premises and covenants hereinafter expressed, the sufficiency of which is acknowledged by each Party, Lessor and Lessee agree as follows:

1. Leased Premises. As of the Effective Date (as defined below), Lessor hereby demises and subleases the portion of the Land described as the Project Site to Lessee and Lessee takes the Project Site for Lessee's exclusive use, together with all other rights and privileges, easements and appurtenances necessary to access and operate the Project Site (the "Leased Premises").

2. Lease Term. The term of this Sublease shall be effective as of the date it is fully executed by the authorized representatives of the parties (the "Effective Date") and extends until the expiration or termination of the Nutrient Concentration System Construction, Interconnection and Operation Agreement and shall automatically renew for one (1) year renewal terms unless either party provides sixty (60) days notice prior to the expiration of the then current term..

3. Rent. In consideration for the rights granted hereunder Lessee shall pay to the Lessor annual rent of \$1.00, payable on the first business day of each year during the Lease Term.

4. Right to Construct Improvements. During the Lease Term, Lessee shall have the right to construct certain improvements reasonably associated with the Project on the Leased Premises. Due to the complicated nature of the Digester operations, all construction and improvements which may impact Digester operations must be approved by Lessor. Lessor's approval shall not be unreasonable withheld. Upon Lessee's submission of improvement plans to Lessor for its approval, Lessor shall have thirty (30) days to review and approve such plans. If Lessor provides notice to Lessee that it disapproves of the improvement plans submitted, such notice of disapproval must provide the reason or reasons for such disapproval. Lessee shall also have the right to operate, maintain, repair and store all materials, tools, consumables, equipment or other items reasonably associated with the procurement, construction, maintenance and operation of the Project within the Project Site. Lessee shall also have the right to maintain operational offices and may, upon approval of Lessor have public exhibitions related to the construction, operation and maintenance of the Project within the Project Site. The foregoing improvements shall be collectively referred to herein as "Lessee's Improvements." For the avoidance of doubt, Lessor has no obligation whatsoever to improve or alter the Land.

5. Disposition at Purchase of the Digester by Lessor. Pursuant to Section 5 of the Ground Lease between the County of Dane and GL Dairy Biogas, GL Dairy Biogas may exercise an option to purchase the Land at the expiration of that Ground Lease. Upon Lessor's exercise of said option, this Sublease shall continue under its stated terms and conditions contained herein until terminated as if such Sublease were a primary ground lease between Lessor and Lessee.

6. No Unauthorized Use. The Leased Premises are not to be used in any manner other than authorized herein without the written consent of the Lessor.

7. Quiet Enjoyment. Lessor represents and warrants that it has a leasehold interest of the Land. Lessor further represents and warrants that on payment of the rent and performance of the covenants and agreements hereunder, Lessee shall peaceably have and enjoy the Lease Premises and the rights granted herein for the Lease Term without any hindrance, molestation or ejection by Lessor, its successors or assigns.

8. Access to Premises. Subject to applicable laws and Lessee's normal security policies, Lessor shall have the right to enter upon the Project Site during normal business hours upon reasonable prior notice (or, in the case of emergency, at any time and with or without notice) for the purposes of making any inspection it may deem expedient to the proper

enforcement of the covenants or conditions of this Sublease, provided that such inspection shall not unreasonably interfere with Lessee's operations. Lessee reserves the right to require that Lessor be accompanied by a representative of Lessee while on the Leased Premises, except in the case of an emergency.

9. Conditions of Premises. Lessee accepts the Leased Premises in its condition on the Effective Date of this Sublease. Lessor makes no representations or warranties concerning the Leased Premises or any matters with respect thereto, except as expressly stated herein. Except for such representations, Lessee is entering into this Sublease based on its own investigation and analysis of the Leased Premises.

10. Maintenance. Lessee shall at its sole cost and expense keep the Leased Premises and the Lessee's Improvements thereon in clean and orderly condition and good repair in accordance with the requirements of all laws, ordinances, codes, order, rules and regulations of all governmental authorities having jurisdiction over the Leased Premises.

11. Additions and Alterations. Lessee shall have the right during the Lease Term to make alterations, attach fixtures, and erect additions to the Lessee's Improvements provided that: (a) Lessor has approved the plans for any addition or alteration to Lessee Improvements ; (b) an Event of Default shall not then exist; (c) all such alterations shall be pursued promptly to completion and shall be completed in good and workmanlike manner; and (d) shall be undertaken in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, order, rules, regulations and requirements of all federal state, and local governments, departments, commissions, boards, and officers. Lessee shall retain title to any readily removable additions or improvements, and to all personal property and trade fixtures.

12. Utilities. Lessee shall provide for the installation of and pay for all utility services supplied to the Leased Premises. All utilities shall be metered separately from Lessor utility services.

13. Taxes, Fees, Permits, and Licenses.

- (a) Real Property Taxes and Assessments. Lessee shall pay, within thirty (30) days after written demand from Lessor, any real estate taxes, assessments both general and special) and other governmental impositions of similar character which are levied against the Leased Premises; provided that Lessee shall have no obligation to pay any of such taxes, assessments and impositions more than ten (10) days prior to the date the same are due to the taxing authority. Lessee's obligations under this Section 18 shall extend only to taxes, assessments and impositions which are properly allocable to the Leased Premises during the Lease Term.
- (b) Fees, Permits and Licenses. Lessee agrees to pay as they become due any and all other taxes, fees, assessments or charges of any type, levied by an entity with authority to do so, against the Leased Premises or against or based upon any improvements, activity or property of any kind thereon.

(c) Tax Exemption. Lessor agrees to cooperate with Lessee in obtaining any applicable tax exemptions for the Leased Premises, improvements, or equipment thereon.

14. Conditions to Obligations of Lessee. Lessee's obligations under this Sublease are subject to execution and consummation of all other agreements and receipt of all required approvals, permits, and consents, including but not limited to those listed in Exhibit C, all in Lessee's sole discretion, necessary to allow Lessee to develop and operate the Project which will be located on Project Site. Lessor's obligations under this Sublease are subject to execution and consummation of all other agreements and receipt and approval of the specific details relating to the construction, interconnection, and operation of the NCS including but not limited to the legal description and drawing of the Project Site in Exhibit B, Plans for improvements contemplated in Section 4, and obtaining a conflict of interest waiver from any contractors of Lessor's that Lessee intends to hire to work on the Project Site, all in Lessor's sole discretion, necessary to allow Lessee to develop and operate the Project which will be located on Project Site.

15. Compliance with Laws. Lessee shall comply with all laws, regulations, ordinances, codes, orders, rules regulations or requirements of all state, federal, municipal and other governmental authority having jurisdiction over the Leased Premises, whether existing on the Effective Date or later adopted.

16. Land Use Matters. Lessor and Lessee acknowledge that Lessee intends to construct and operate the Project upon the Project Site. Lessor agrees to execute or join with Lessee as necessary in the execution of any necessary reciprocal easement agreements or lot tie agreements and in applications to obtain such subdivisions, parcel maps, use permits or use or zoning changes or variances as may be reasonably necessary for Lessee's development and use of the Leased Premises, all at Lessee's expense and without cost or expense to Lessor. Subject to the conditions set forth in the preceding sentence, Lessor shall cooperate with Lessee's efforts to obtain authorization for the construction, operation and maintenance of Lessee's Improvements. Lessor shall have no obligation to cooperate or execute anything which in its reasonable determination would negatively impact the operations of the Digester.

17. Encumbrances. Lessor represents and warrants that it has a leasehold interest to the Land and that it has neither granted nor created and covenants that it will not grant, create or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to its leasehold interest to the Leased Premises that will impede, encumber or otherwise prevent Lessee from contracting and operating the Project. If Lessor's interests in the Land or in this Sublease is sold or conveyed upon the exercise of any remedy provided for in any mortgage loan or otherwise by operation of law, this Sublease will not be affected in any way, and Lessee will attorn to and recognize the new holder of the Leasehold interest as Lessee's Lessor under this Lease. Lessee will confirm such attornment in writing within thirty (30) days after Lessee's receipt of a written request for attornment.

18. Casualty. In the event of destruction or damage to the Lessee's Improvements by fire or other casualty, Lessee shall be entitled to all Lessee insurance policy proceeds for damage to Lessee Improvements and shall, diligently proceed to make all repairs necessary to restore the



Lessee's Improvements to substantially the same condition in which they existed immediately prior to such destruction or damage, subject to delays beyond the control of Lessee. If such insurance proceeds are insufficient to restore building to substantially the same condition, Lessee is under no obligation to repair or rebuild Lessee's improvements. If Lessee elects not to repair or rebuild Lessee improvements, Lessee shall promptly notify Lessor, this Sublease shall immediately terminate, and Lessee shall decommission the site in accordance with Section 22.

19. Condemnation. If during the Lease Term, all of the Leased Premises (or if less than all, but the remaining portion will not permit Lessee to operate the Project on the Leased Premises), shall be acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or sold to a condemning authority under threat of condemnation or in lieu thereof (hereinafter, a "Condemnation"), then the Lease Term shall cease and Sublease terminate as of the date of title vesting in such proceeding (or sale) and all rent shall be paid up to that date. In the event of any Condemnation, taking, or sale as aforesaid, whether whole or in part, Lessee shall be entitled to any award for the Lessee's Improvements.

20. Mutual Representations and Warranties. Each Party warrants and represents to the other that:

- (a) Except as specifically set forth herein, the execution, delivery and performance of this Sublease has been duly authorized by all necessary action on the part of such Party and this Sublease constitutes the valid and legally binding obligation of such Party;
- (b) Neither the execution nor delivery by each Party of this Sublease, nor the performance thereof of their respective obligations hereunder conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to them, or conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which either Party is a party or by which either Lessee or Lessor or any of their properties or assets are bound, or constitutes a default thereunder;
- (c) No approval, authorization, order, consent, declaration, registration or filing with any federal, state or local governmental authority is required for the valid execution and delivery of this Sublease, except such as have been disclosed and have been duly obtained or made;
- (d) Neither Party has any knowledge of any action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against Lessee or Lessor, in which an unfavorable decision, ruling or finding would adversely affect the performance by either Party of its obligations hereunder, or that, in any way, would materially adversely affect the validity or enforceability of this Lease; and

- (e) No broker negotiated this Sublease or was involved in any respect in the implementation thereof and there is no broker or any other person entitled to any commission in connection therewith.

21. Events of Default, Rights & Remedies.

- (a) The occurrence of any of the following will constitute an "Event of Default" for the purposes of this Sublease:

- i. Failure to pay when due any amount payable hereunder by either Party, and whereby such default continues for a period of thirty (30) days after the non-defaulting Party has given notice to the defaulting Party specifying such default and demanding the same to be remedied;
- ii. Unless otherwise provided for in this Sublease, failure to abide by any terms, conditions, covenants, or warranties as described in this Sublease and whereby such default were to continue for a period of forty-five (45) days after the non-defaulting Party has given notice to the defaulting Party specifying in reasonable detail such default and demanding the same to be remedied;
- iii. Termination of the Nutrient Concentration System Construction, Interconnection, and Operation Agreement; or
- iv. Termination of the Digester Development, and Operation Agreement

- (b) Remedies. Upon the occurrence of an Event of Default subject to the limitations set forth in Section 19, the Parties hereto have the following remedies:

- i. The non-defaulting Party shall have the right (but not the obligation) to take such reasonable action as is necessary to cure the default, subject to all applicable cure periods.
- ii. The non-defaulting Party shall have the right to all damages suffered as a result of such Event of Default.
- iii. The non-defaulting Party shall have the right (but not the obligation) to terminate this agreement immediately upon written notice following the expiration of any applicable cure period.

- (c) No acceptance by Lessor of rents, fees, charges or other payments, or waiver by Lessor of any default on the part of the Lessee in the performance hereunder shall act as a waiver of Lessor or any subsequent default or of any right granted Lessor herein.

22. Effect of Termination. In the event of termination of this Sublease, Lessee shall decommission the site by removing all Lessee Improvements from the Leased Premises within twelve (12) months of the date of termination. Lessor and Lessee shall cooperate on a schedule for decommissioning the site and all decommissioning activities shall take place with a representative from both Parties present. Lessor shall have the right to waive any aspect of decommissioning. The County shall be responsible for all costs associated with removal of the equipment from the project site.

23. Limitations. Neither Party will be responsible for any Claims relating to the Leased Premises arising out of or resulting from the following:

- (a) Willful damage, misconduct, vandalism or any other unauthorized acts of third parties unless such third party is an invitee of the non-claiming party; or
- (b) A "Force Majeure Event" defined as an act of God, strike, lockout or industrial dispute or disturbance, civil disturbance, an act of the public enemy, war (whether or not declared), a riot, blockage, insurrection, an epidemic, winds, hurricane, tornado, landslide, lightning, windstorm, earthquake, storm, flood, acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity (provided that the Party claiming Force Majeure did not create or contribute to such act, failure to act or order) or any other cause, whether enumerated herein or otherwise, not reasonably within the control of the Party claiming Force Majeure, other than the financial inability of such Party (provided that the Party claiming Force Majeure did not create or contribute to such act, failure to act or order), which precludes that Party from carrying out, in whole or in part, its obligations under this Lease.

24. Right of Termination not Exclusive. Unless expressly provided otherwise, each Party's right to terminate this Lease, as described above, shall be in addition to any rights and remedies that the Party may have at law or in equity consequent upon any breach of this Lease, and the exercise by a Party of any right of termination shall be without prejudice to any other such rights and remedies.

25. Modification, Terms of Agreement. This Sublease maybe modified or amended only in writing executed by duly authorized representatives of the Parties hereto.

26. Entire Agreement and Invalid Provisions. Except for the NCS Interconnection Agreement, all terms and conditions with respect to the matters addressed by this Sublease are expressly contained herein, and each Party hereto expressly agrees and specifically acknowledges by its execution of this Sublease that it has not relied on any verbal promise, representation or warranty made by the other Party, its employees or agents with respect to this Sublease or any of the matters and rights addressed herein. In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall in no way affect any other covenant, condition or provision herein contained.

27. Notices. Notices hereunder shall be sufficient and effective as of the date of post mark if sent by regular mail, postage prepaid, addressed to:

LESSEE: County of Dane  
Department of Administration  
Room 425, City-County Building  
210 Martin Luther King, Jr., Blvd.  
Madison, WI 53703

LESSOR: GL Dairy Biogas, LLC  
1900 South Avenue  
La Crosse, WI 54601

With a copy to  
Gundersen Health System  
1900 South Avenue  
La Crosse, WI 54601  
Attention: Legal Department

Or to such other addresses as the Parties may designate to each other in writing from time-to time. Lessee shall provide Lessor with the name and address of Lessee's registered agent, and notify Lessor as to any change of said registered agent within 7 working days of such change.

28. Partial Invalidity. If any term, covenant, condition or provision of this Sublease or the application thereof to any person or circumstance will, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to where it is held invalid or unenforceable, will remain in effect and each term, covenant, condition and provision of this Sublease will be valid and be enforced to the fullest extent permitted by law.

29. Memorandum of Lease. While the Parties agree that this Sublease will not be recorded in the public records, the Parties may execute duplicate originals of a memorandum of lease setting forth a description of the Leased Premises, the Lease Term and any other portions of this Lease, excepting the rental provisions, as either Party may request. Any and all recording costs and documentary stamps or tax, if any, required in connection with the execution of this Sublease and the recording of the memorandum of Lease will be paid by Lessee.

30. Interpretation. This Sublease may be executed in several counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Should any provisions of this Sublease require judicial or other interpretation, it is agreed that the court or other body or agency interpreting or construing the same will not apply a presumption that the terms hereof will be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agents prepared the same, it being understood and agreed that all Parties hereto, directly and/or through their agents, have participated in the preparation hereof.

31. Bind and Inure. The obligations of this Sublease will run with the Land; this Sublease will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

32. Assignment. Except as permitted or provided for herein, neither Party shall assign this Sublease without prior written consent of the other Party hereto, provided that either Party may assign its interest in this Sublease to a subsidiary or affiliate or in connection with an asset or stock sale or merger, consolidation or transfer of assets.

33. Further Assurances. If either Lessor or Lessee reasonably determines or is reasonably advised that further instruments or any other things are necessary to carry out the terms of this Lease, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Lease.

34. Governing Law and Venue. This Sublease and the performance thereof will be governed, interpreted and construed by the laws of the State of Wisconsin. Venue shall lie in the courts of Dane County, Wisconsin.

35. Waiver. Failure of any Party hereto to complain of any act or omission on the part of any defaulting Party, no matter how long the same may continue, will not be deemed to be a waiver by such Party of any of its rights hereunder. No waiver by any Party hereto at any time, express or implied, of any breach of any provision of this Sublease will be deemed to be a waiver by such Party of any subsequent breach of the same or any other provision.

36. Material Change in Law. In the event of a Material Change in Law, the Parties shall, to the extent necessary and possible, reform this Sublease to ensure compliance and conformity with such Material Change in Law and to restore or retain the Parties' original benefits and burdens under this Lease. For purposes of this Lease, a "Material Change in Law" shall mean: (a) the adoption, promulgation, change, repeal or modification after the Effective Date of any laws, codes, regulations, statutes or orders, (b) an interpretation or application by a governmental authority of a law which had not been made, or which if made, was different than a prior interpretation of or application by such governmental authority or another governmental authority, or (c) the imposition of any material condition in connection with the issuance, renewal, extension, replacement or modification of any permits after the Effective Date that in the case of (a), (b) or (c): (i) establishes requirements for the construction, financing, ownership, operation or maintenance of the Lessee's Improvements that are materially more restrictive than the most restrictive requirements in effect as of the Effective Date, and (ii) has a material and adverse effect on the Lessee's quiet enjoyment of the Leased Premises.

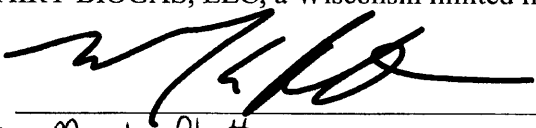
37. Commercial Acts. Lessor and Lessee unconditionally agrees that the execution, delivery and performance of this Sublease constitute private and commercial acts and not a sovereign act.

*[Signature page immediately follows]*

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized representatives executed this Sublease as of the dates so indicated.

LESSOR:

GL DAIRY BIOGAS, LLC, a Wisconsin limited liability company

By:   
Name: Mark Platt  
Title: Sr. Vice President, Business Svcs

Date: 3-2-17

LESSEE:

COUNTY OF DANE, a Wisconsin county and body corporate pursuant to Chapter 59 of the Wisconsin Statutes

\_\_\_\_\_  
Joe Parisi, County Executive

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

\_\_\_\_\_  
Scott McDonell, County Clerk

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

## **EXHIBIT A**

### Legal Description of Land

Lot 2 of Certified Survey Map No. 13509, recorded with the Register of Deeds of Dane County, Wisconsin, May 15, 2013, in Volume 88 of Certified Survey Maps, Page 89, as Document No. 4987626, located in the Town of Springfield, Dane County, Wisconsin.

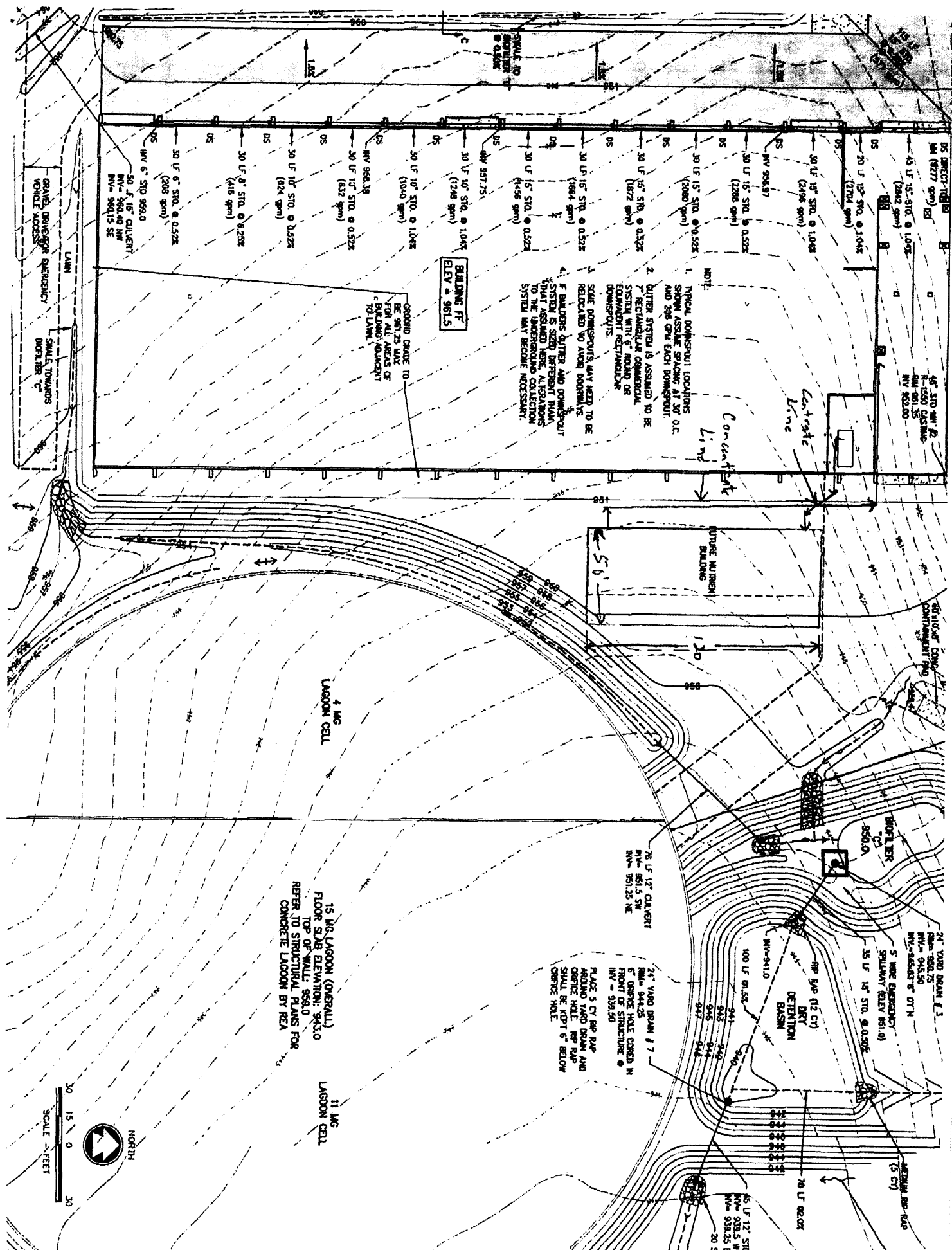


## **EXHIBIT B**

### **Project Site Description**

The Project Site shall consist of a location immediately to the East of the Solids Building, South of the Digester Tanks, and Northwest of the Lagoon, at which the Lessee shall, subject to approval by Lessor, have the right to make improvements to the Land reasonable and necessary to shelter and house the Nutrient Concentration System as described in the NCS Interconnection Agreement. The improvement shall have approximate dimensions of sixty (60) feet by eighty-five (85) feet and the Project Site shall extend twenty (20) feet beyond the outside boundary of the improvement in a contiguous perimeter surrounding the improvement.

Lessee shall provide a legal description of the Project Site and provide a visual depiction of the Project Site before the commencement of any construction activities. The legal description and visual depiction must be approved in writing by Lessor to become effective.



**BUILDING FF  
ELEV = 961.5**

GROUND GRADE TO BE SET AS MAX FOR ALL AREAS OF BUILDING ADJACENT TO LAWN.

1. TYPICAL DOWNSPOUT LOCATIONS SHOWN ASSUME SPACING AT 30' O.C. AND 200 GPM EACH DOWNSPOUT.
2. BUTTER SYSTEM IS ASSUMED TO BE 3" RECTANGULAR CONCRETE SYSTEM WITH 6" RIGID OR DOWNSPOUTS.
3. SOME DOWNSPOUTS MAY NEED TO BE RELOCATED TO AVOID DOORWAYS.
4. IF BUILDERS BUTTER AND DOWNSPOUT SYSTEM IS SIZED DIFFERENT THAN THAT ASSUMED HERE, ALTERATIONS TO THE UNDERGROUND COLLECTION SYSTEM MAY BECOME NECESSARY.

Concentric Line

Contour Line

4 MG LAGOON CELL

15 MG LAGOON (OVERALL)  
FLOOR SLAB ELEVATION: 943.0  
TOP OF WALL: 958.0  
REFER TO STRUCTURAL PLANS FOR CONCRETE LAGOON BY REA

11 MG LAGOON CELL

24" VARD DRAIN # 7  
RIP- 944.25  
5" GORGE HOLE COVERED IN FRONT OF STRUCTURE  
INV = 938.50  
PLACE 5 CY RIP RAP AROUND VARD DRAIN AND GORGE HOLE. RIP RAP SHALL BE KEPT 6" BELOW GORGE HOLE.

DETENTION BASIN  
RIP RAP (12 CY)  
RIP- 941.10

5" WIRE MESH REINFORCED DETENTION (ELEV 931.0) SILLMANT (ELEV 931.0)

24" VARD DRAIN # 3  
RIP- 943.75  
RIP- 943.50  
RIP- 943.25  
5" WIRE MESH REINFORCED DETN

45" LF 12" STD  
RIP- 938.5 W  
RIP- 938.25 E  
20 SY



SCALE - FEET

30 15 0 30

## **EXHIBIT C**

### **Required Agreements, Approvals, Permits and Consents**

- Town of Springfield Building Permit
- Dane County Stormwater Permit
- Nutrient Concentration System Equipment Lease.
- Nutrient Concentration Facilities Lease
- Nutrient Concentration System Construction, Interconnection and Operation Agreement
- Nutrient Concentration System Operator Agreement
- Design and Construction Agreements
- All "As Built" documentation
- Town of Springfield Conditional Use Permit (if necessary)