

**TO:** Mayor, City Staff

**FROM:** Madison Food Policy Council Regional Agriculture & Food Sovereignty Work Group

**RE:** Leasing of City-Owned Agricultural Lands

**DATE:** January 2022

## **INTRODUCTION**

In 2019, the City of Madison was leasing 7 parcels of land (about 200 acres) to local farmers; the provisions of these leases had not been reviewed for many years. Based on the work of several City-authorized groups, the Madison Food Policy Council (MFPC) recommends that leases be revised to align terms with planned future land uses and community values expressed in adopted City plans. Additionally, the MFPC recommends that provisions be added to these leases to promote best management practices, protect pollinators and the health of people who live nearby. These changes would be especially appropriate on acreage that is planned for public parks; there is also a community desire for urban agriculture that could be made available on portions of land that are expected to remain in the public domain.

## **BACKGROUND**

There has been an understanding of the need for revision to the City-owned agricultural leases for a number of years. These efforts include:

- **2014** – The City’s Pollinator Protection Task Force (convened by the MFPC) recommended review of management agreements for city-owned agricultural lands. The 2016 MFPC Pollinator Protection Work Group and 2018 Integrated Pest Management Policy Review Task Force supported further recommendations and were in the middle of discussions with Economic Development Division staff on this priority issue when the pandemic interrupted their efforts.
- **2018** – The MFPC formed the Urban Agriculture Work Group to continue looking at issues related to City-owned land that could be used for agriculture. When a lease appeared on the Common Council’s Agenda in April 2019 [Legistar 55210], the Mayor requested that City Staff and the Work Group explore updating and revising its language. This Work Group requested the list of city-owned lands currently being leased for agriculture and a sample lease, then held meetings with local experts to discuss possible revisions; its efforts were also interrupted by the pandemic.
- **2020** – The Regional Agriculture and Food Sovereignty (RAFS) Work Group was established jointly by the MFPC and the Dane County Food Council (DCFC) to address problems highlighted by the COVID-19 pandemic. RAFS re-started the conversation about lease language, and confirmed that the City was still leasing the same 7 parcels it was in 2019.

- **2021** The City provided the only new lease it had signed this year, which included several important changes; the prohibition of additional herbicides, a 2-year term for mowing of city-owned hay fields, and requirements for no-till practices and appropriate ground conditions during harvest. The [Sustainability Plan](#), which was adopted in 2011 – and included in its Planning & Design chapter a goal to “Promote and foster local food systems” – is being updated by the Sustainable Madison Committee, and is expected to address the use of city-owned agricultural lands.

All agricultural land in Wisconsin must meet certain state standards of practice (see [Chapter NR 151, Wisconsin Administrative Code](#)); these standards are administered by staff at the county level who can be consulted for this purpose by any landowner. This is welcome news, since the City of Madison does not have staff or procedures in place for managing agricultural lands that have been purchased for other future uses. As a result, these lands have simply been maintained by a neighboring farmer with little guidance about how they are managed, with leases that have generally been renewed every 1-2 years, at very low rental rates, with little opportunity for other farmers to bid on them. By comparison, Dane County owns and leases many more properties (70) on many more acres (2600) than the City of Madison; the average county-owned parcel is 30-40 acres with multi-year leases and renewal options that range from 2-4 years. County leases often require the maintenance of waterways, perimeter trails, and other services for public recreation or land management. Farmers who lease county land are required to submit an annual Nutrient Management Plan (NMP) and soil sample results, and all are required to follow USDA-NRCS conservation practice standards. County leases may also include specific provisions that support organic practices, reduced tillage, and provide for transitioning the land to prairie restoration as its future use.

## DISCUSSION

Based on months of research and discussion, the Madison Food Policy Council and its Regional Agriculture & Food Sovereignty Work Group, strongly recommend that the City revise its leases on the agricultural lands it owns and manages to support the principles expressed in its Comprehensive Plan, Sustainability Plan, facilities and neighborhood plans, and its commitments to the community.

The City’s [Comprehensive Plan](#) (adopted in 2018), which supports a strong local food system in nearly every chapter, utilizes lenses that provided a strong framework for this Work Group’s analysis and recommendations:

- Conventional farming with chemical inputs is potentially hazardous to Public Health and the Environment. Where city-owned lands are located near residential areas, schools etc., these practices bring the risk of exposure and illness to children and families. Seed treatments and pesticides threaten pollinators vital to the food supply and impair soil health. Runoff of chemicals spread on the land threatens stream water quality and may harm fisheries; infiltration into groundwater threatens contamination of drinking water.

- Sustainability and Adaptability (resilience) are enhanced by agricultural practices that protect nearby residents and pollinators while building soil health to improve food production, stormwater retention and carbon capture capacity of these lands.
- Equity would be improved by a more transparent and public process, offering more farmers an opportunity to bid on available leases. Local growers who utilize sustainable farming practices, but may not be immediate neighbors, and new farmers are looking for land. See Survey Summary in References.

To address these issues, and to implement the principles and goals in its adopted plans, a number of factors should be considered when evaluating the terms for each lease:

- Location The properties being leased are within City boundaries. Some are near other currently undeveloped parcels, others are in neighborhoods; some are near waterways, some are on slopes, others are relatively flat. All should be evaluated for these characteristics and others that may be relevant to how the land should be managed to meet state standards.
  - Lands near residential areas pose the greatest concern for public health if chemical farming methods are used, but they may also offer the greatest opportunity to add to the local food supply especially if neighbors do not have good access to stores (see the [City's Food Access Maps](#)) and/or have shown an interest in starting a community garden.
  - Lands on steep slopes are at the greatest risk of soil loss if appropriate methods of tillage and cropping are not implemented.
  - Lands near waterways, especially on steep slopes that run down toward the stream, marsh, lake, etc., are most susceptible to runoff of chemicals, and to soil loss if cover crops aren't used to keep growing roots in the soil year-round. Buffer strips in these fields can be planted with deep-rooted perennials (e.g. prairie species) to increase infiltration and hold soil in place.
- Future Use & Timing Several city departments including Engineering, Parks, Real Estate, and the Water Utility may have plans for these lands. It will be important to know whether the future use of a particular parcel would benefit from a change in the duration of a lease and the agricultural practices it may specify.
  - Lands whose use could change from one year to the next could consider shorter terms and permit more conventional practices where appropriate after evaluating location factors.

- Lands whose anticipated use would take longer than 1 year to implement should consider longer lease terms and encourage best management practices, e.g. reduced tillage, cover crops, Nutrient Management Plans.
- Lands that the City expects to continue to own for public purposes should consider longer lease terms, require transitioning away from conventional (chemical) farming, and specify best management practices. For these properties, especially those destined to be parks, planning should anticipate and provide for the location of urban agriculture zones and community gardens. Stormwater management areas should consider requiring cover crops and/or transitioning to prairie to enhance infiltration and reduce potential for flooding. Water wellhead protection areas may have special requirements that need to be met in leases on these properties.

## **RECOMMENDATIONS:**

1. Revise City Lease Language: Implementing community values as expressed in adopted City plans and addressing the factors identified in this memorandum can be accomplished by revising only a few provisions in each lease. Dane County has developed some very helpful language regarding the “Use and Restrictions on Use of Leased Premises” that could be integrated into Section 5 of the City’s lease template, and Section 6 could easily be improved by adding references to more of the governmental subsidy programs available to incentivize farmers to adopt best management practices. These provisions, and others, are provided in the Potential Lease Language Addendum attached to this policy memorandum.
2. Encourage and Incentivize Best Management Practices: Permit and encourage farmers to apply for subsidized programs on leased lands, and potentially use increased revenue from rental fees to fund some of the seeds and equipment needed to facilitate transitions to more beneficial agricultural practices.
3. Proactively Find and Reserve Land for Urban Agriculture: When planning for future uses of acres that are expected to remain city-owned for public use, identify and protect appropriate acres for continued agricultural use.

ADDENDUM: (4 pages)

Lease Language Recommended Revisions

REFERENCES: (13 pages)

Land Access Survey (Gardens Network Summary 2021)

City of Madison current lease language (2021)

Dane County lease template (2017)

Dane County lease grade stabilization Addendum (2019)

## **ADDENDUM**

### **LEASE LANGUAGE RECOMMENDED REVISIONS**

Using the 2021 lease provided as a Reference to the Policy Memorandum as a template, the following provisions would be specific to each lease, property and party.

**1. LEASED PREMISES**

Legal description will be specified for each parcel.

**2. TERM**

The duration of the lease may vary from one property to another. In general, longer lease terms are recommended to make it possible for farmers to invest in better management practices such as nutrient management plans, reduced tillage, crop rotation, responsible pest management, cover crops, and buffer strips.

**Annual.** While a year-to-year lease may make sense for land that could be sold and/or developed at any time, it prevents farmers from planning ahead, provides no incentive to follow best management guidelines, and likely results in the continuation of conventional (chemical) practices.

**Multi-year.** Longer leases allow farmers to plan ahead, participate in subsidized programs, and invest in more diverse crop rotations that may include more expensive seed. Notice periods should be correspondingly longer.

**3. RENEWAL**

Leases have typically been renewed automatically without changes in the terms or the parties. The following recommendations could encourage best practices and a more inclusive process:

- a. Consider longer notice provisions on leases with longer terms,
- b. Consider limiting the hold-over provision in Paragraph 19 to less than one year, and
- c. Consider a more open bidding process, with potential for a right-of-first-refusal for farmers who are meeting expectations.

**4. RENT**

Recommend increasing rent to local market rates. A portion of the increased revenue could then be used to offset or incentivize the increased costs and expectations involved in requiring best management practices.

## 5. **USE AND RESTRICTION ON USE OF LEASED PREMISES**

This section of the current lease is where significant revisions are recommended. City leases should incorporate Wisconsin's statewide agricultural performance standards and prohibitions that all cropland and livestock operations are expected to meet as outlined in [Chapter NR 151, Wisconsin Administrative Code](#). The following sections headings are slightly modified from the current lease, some of whose provisions should be preserved, some should be modified, and a few additions from Dane County leases should be considered. County staff provide support to farm operators in meeting these standards.

- a. Acres subject to lease are currently subsection 5(a). Consider adding Dane County lease provisions that address acreage adjustments and exclusions, a description of location factors (topography, proximity to waterways and residential areas, etc.) and plans for future use of the property.
- b. Planting and Tillage would consolidate elements from current subsections 5(a) & (c), and address the state's requirements for a Nutrient Management (with Crop Rotation) Plan, reduced tillage, maintaining soil cover, and the use of buffer strips when recommended by the county.
- c. Chemical inputs that contain DiCamba, Glyphosate or Atrazine are currently prohibited in subsection (d). Consider adding neonicotinoids to implement a key recommendation of the 2015 Pollinator Protection Report.
- d. Harvest provisions would address issues like mowing frequency and ground conditions required for field operations currently addressed in subsection (b).
- e. Prohibited Plant removal should be added. Dane County requires removal of Canada Thistle; City MGO 23.29 lists both Canada Thistle and Wild Parsnip as prohibited plants on land within its boundaries.
- f. Tree trimming and/or removal are prohibited without permission by Dane County, consider adding to City leases.
- g. Signage is prohibited without permission by Dane County, consider adding to City leases.
- h. Hunting is prohibited in subsection (e) of current city leases.
- i. Encumbrances are prohibited in subsection (f) of current city leases.

The following explanations and current Dane County lease language (in italics) may be helpful when considering provisions for Section 5 above:

**Nutrient Management**, which can be achieved by careful crop rotation, conserves nutrients for plant production, minimizes pollution of surface and groundwater resources, protects air quality, and maintains or improves the physical, chemical, and biological condition of the soil (from USDA Natural Resource Conservation Service (NRCS) [590 Nutrient Management](#) code). Suggest the following language from Dane County leases be used:

- a. *LESSEE shall submit to Land Water Resources Department (LWRD) annually by June 1<sup>st</sup> of each year, a Nutrient Management Plan (NMP) developed in accordance with the USDA Natural Resource Conservation Service (NRCS) [590 Nutrient Management](#) conservation practice standards and specifications.*
  - i. *NMP shall be submitted electronically using the current version of [SnapPlus](#), Wisconsin's nutrient management planning software.*
  - ii. *All leased acres shall be managed to not exceed tolerable soil loss ("T") as documented in the NMP.*
  - iii. *All leased acres shall be managed to not exceed the phosphorus index (PI) as documented in the NMP.*
- b. *LESSEE shall collect soil samples in accordance with UW [A2100](#) recommendations and submit results within the first year of this lease contract, but no later than June 1, 2021. Soil sample results shall be included with the NMP.*
- c. *No phosphorous fertilizer shall be applied unless recommended by soil samples and verified by a certified crop advisor with the exception of starter at a rate not to exceed 20 pounds/acre for corn. Phosphorus applications can be re-evaluated upon receipt of soil samples.*
- d. *Manure may only be applied according to crop needs, based on the University of Wisconsin recommendation for the current crop. This recommendation must be included in an NMP before manure is applied. Manure applications may be re-evaluated upon receipt of soil samples and an NMP. Manure shall not be stacked or stored on leased acres. Application of manure on saturated soils, snow covered or frozen ground is prohibited.*

**Diverse crop rotation** increases soil organic matter, reduces soil erosion, reduces fertilizer needs and pesticide costs, adds biodiversity, and provides wildlife habitat (from USDA-NRCS [Crop Rotation](#)). A Crop Rotation Plan would be incorporated into the Lessee's Nutrient Management Plan, and can be expected to differ from one lease to another, e.g. 3-4 year rotations for produce, 5-6 year rotations for alfalfa, 7-10 year rotations for grains.

**Soil Cover** is important to keep soil in place and build soil health. Soil cover refers to a protective layer over the soil to prevent exposure to erosion and nutrient runoff. Soil cover can be achieved by planting perennial crops such as alfalfa (to

cover the soil for 3-5 years), planting cover crops that remain in the soil from late fall to early spring when cash crops are not growing.

**Reduced Tillage** is closely linked with soil cover in its importance to maintaining soil health. Tillage is the act of turning and breaking soil that disrupts both soil structure and crop residue on the soil surface. Reducing tillage helps protect soil biology and integrity. Suggest the following language from Dane County leases be used (these are No Till conservation practice standards):

1. *Maintain a minimum of 60% per acre of residue cover on the soil surface year-round.*
2. *Maintain crop stubble height of at least 10 inches for row spacing less than 15 inches and at least 15 inch stubble height for crop row spacing 15 inches or greater.*
3. *Maintain crop residue standing during the winter period to trap snow.*
4. *Intensive grazing and removal of crop residue by baling is not allowed.*
5. *Residue is not allowed to be shredded after harvest.*

**Buffer Strips** should be prioritized in areas adjacent to lakes, streams, or wetlands to preserve water quality. These conservation measures slow water runoff; trap sediment and dust; trap fertilizers and pesticides; protect wildlife and provide habitat; and reduce winds, noise, and odors (from USDA-NRCS [Conservation Buffers](#)). Suggest the following language from Dane County leases be used:

*LESSEE shall establish and/or maintain a vegetated buffer setback of at least 30 feet from all perennial and intermittent streams, lakes, ponds, wetlands, ditches, and other water features as identified.*

### **Transition to Future Land Use**

If the site is slated for future prairie restoration or a conservation park, the lease may need to contain additional specified practices or prohibitions in order to sufficiently prepare the land for its future use.

### **6. FSA Program Payments**

Permits lessee to apply for Farm Service Agency (FSA) or other government subsidy program payments. Expand this to include Environmental Quality Incentives Program (EQIP through USDA) and Land & Water Resource Management Plans (LWRMP) (administered by the county through DATCP).

Additional Suggestion:

Paragraph 24 of the current lease addresses Non-Discrimination. Upon review of that language, consider adding Equal Opportunity and Affirmative Action in separate provisions. Pay particular attention to new farmers and diverse populations.

## REFERENCES:

### Gardens Network Land Access Survey - Summary 2021

In an ongoing effort beginning in February 2019, Gardens Network staff worked with other regional agricultural collaborators to collect information through an [online survey](#) from community members looking for access to agricultural land. Our goal was to assess the needs of growers throughout Dane County. Most respondents reside within the City because the Gardens Network is most widely known by community gardeners in Madison, but this is a growing list as we continue to share this survey with growers and agricultural partners.

Starting in 2019, the Gardens Network received land requests from 80 growers, requesting a total of 120 acres. Growers are generally interested in vegetable, fruit, and herb production. A small number are also interested in growing flowers, greenhouse production, and keeping animals, mostly poultry. When asked, most growers report multiple years of experience.

The majority of respondents are willing to travel, especially if other members of their community are growing at the same location. Larger acreage could be used to serve many of the respondents interested in communal growing, reducing cost by sharing space, infrastructure and other resources.

Key points:

- 5 growers are interested in 5 acres or more
  - Most have at least 5 years growing experience and are already growing somewhere in Dane County
  - All speak English, with one grower who speaks Hmong as well
  - These growers are mostly interested in production for market
- 26 growers are interested in between 1 and 4 acres
  - Most growers report multiple years of experience
  - 75% of these growers primarily speak native Hmong, most of the remaining 25% are native English speakers
  - Roughly half of the growers are interested in market sales, and half are interested in production for their families
- 49 growers are interested in less than 1 acre
  - Roughly half of these growers report multiple years of growing experience
  - 60% of these growers speak primarily Hmong, most of the remaining 40% are native English speakers
  - These growers are mostly interested in growing for family production

**CITY OF MADISON  
LEASE**

(This document is a lease of less than 99 years and not a conveyance subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

---

This Lease, entered into this [REDACTED] day of [REDACTED], 2021, by and between the **City of Madison**, a Wisconsin municipal corporation, located in Dane County, Wisconsin ("City"), and [REDACTED], an individual residing in Dane County ("Lessee").

WITNESSETH:

NOW, THEREFORE, it is mutually agreed as follows:

1. Leased Premises. The City hereby leases to the Lessee the tract of land ("Leased Premises") described on Exhibit A and depicted on Exhibit B, which exhibits are attached and made a part of this Lease.
2. Term. This Lease shall be for a term of two (2) years, subject to early termination pursuant to the terms of this Lease. This Lease shall commence as of January 1, 2021 (the "Effective Date") and expire on December 31, 2023.
3. Renewal. This Lease may be renewed for subsequent two (2) year terms upon agreement of the parties as to the terms of the renewal, including but not limited to the rental rate. If the Lessee desires to renew the Lease, the Lessee must give notice in writing to the City a minimum of thirty (30) days prior to the expiration of the initial term or any renewal term, by the mailing of a notice by certified mail, return receipt requested, or by personal delivery to the Office of Real Estate Services at the address specified in the Lease. Following receipt of such notice, the City may indicate by written notice to the Lessee its approval or denial of the Lessee's request for renewal. If the City does not assent to a renewal notice within thirty (30) days after receipt of such notice, renewal shall be deemed denied and in no event shall the City be responsible for reimbursement of any costs expended by the Lessee in anticipation of a Lease renewal (e.g., seed, fertilizer, etc.).
4. Rent.
  - a. The Lessee shall pay rent to the City in the sum of Four Hundred Fifty and 00/00 Dollars (\$450.00), due on or before July 1, 2021.

**KRISTI CHLEBOWSKI  
DANE COUNTY  
REGISTER OF DEEDS**

**DOCUMENT#  
5725687**

05/06/2021 09:26 AM

Trans Fee:

Exempt#:

Rec. Fee: 30.00

Pages: 11

\*\*The above recording information  
verifies that this document has  
been electronically recorded and  
returned to the submitter.\*\*

---

RETURN TO: City of Madison  
Office of Real Estate Services  
P.O. Box 2983  
Madison, WI 53701-2983

---

---

Tax Parcel No: 251-0710-132-0201-6 (part of)

---

- b. Rent is based on the following formula:

\$25.00 per mowed acre x 6 acres= \$150.00

\$30.00 per acre planted in Sorghum Sudangrass x 10 acres= \$300.00

- c. All payments are to be made payable to the City Treasurer and sent or personally delivered to the Economic Development Division at the address specified in Paragraph 23.
- d. In addition to the provisions of Paragraph 15, the City shall have the right, under this Paragraph, to send late payments of Rent to a collection agency and to the Wisconsin Department of Revenue pursuant to the State Debt Collection program under Wis. Stat. §71.935.

5. Use and Restriction on Use of Leased Premises.

- a. The Lessee shall use the Leased Premises solely for the mowing and baling of grass, as well as the planting and harvesting of Sorghum Sudangrass in an area not to exceed ten (10) acres. Such farming shall be conducted in accordance with usual and recognized farming practices of Dane County, Wisconsin.
- b. The Lessee shall mow the Property, excluding the area planted in Sorghum Sudangrass, at least twice during the growing season, but only when ground conditions are firm and dry.
- c. The Lessee agrees to plant Sorghum Sudangrass using no till methods.
- d. The Lessee shall not apply Dicamba, Glyphosate, Atrazine or any herbicide that lists Atrazine as an active ingredient on the Leased Premises.
- e. The Lessee shall not hunt upon the Leased Premises and shall ensure that the Leased Premises are not used for hunting purposes.
- f. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.

6. FSA Program Payments. The Lessee shall be entitled to make application(s) for receipt of payment(s) from the Farm Service Agency (FSA) or from any other government subsidy program, and shall be entitled to receive all such payments attributable to the Lessee's use of the Leased Premises from any such program(s). Any FSA or other government subsidy program payments shall be the sole property of the Lessee, and the City shall have no interest therein. The Lessee shall make no contractual commitments or arrangements of any nature concerning the Leased Premises with the FSA or with any other government subsidy program which extend beyond the expiration date of this Lease.

7. Subletting and Assigning Lease. The Lessee shall not assign this Lease or sublet the Leased Premises, or any portion thereof, without the prior written consent of the City, which consent the City may withhold in its sole discretion.

8. Repairs. The City is not obligated to fence, make repairs to any fences, or to make any other repairs to the Leased Premises, and any fencing, fence repair, or other repair which is required by law or which the Lessee may consider necessary shall be made by the Lessee at the Lessee's sole expense.
9. Indemnification. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Lessee or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in or related to the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of this Lease.
10. Insurance. The Lessee shall carry farm general liability insurance covering as the named insured the Lessee and naming the City, its officers, officials, agents, and employees as additional insureds, with a minimum limit of \$500,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Lease is in effect, Lessee shall provide a renewal certificate to the City for approval.
11. Hazardous Substance Indemnification. The Lessee represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease, or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of this Lease.
12. Compliance. The Lessee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises. The Lessee may, if in good faith and on reasonable

grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

13. Subordination.

- a. This Lease is subordinate to rights and privileges granted by the City to public and private utilities across, over or under the Leased Premises.
- b. The Lessee shall subordinate its rights in this Lease, without compensation, at the request of the City to provide easements and rights-of-way for all current and future public and private utilities across or along the Leased Premises, provided that neither such subordination nor such easements shall interfere, except temporarily during construction or temporarily pursuant to rights which accrue to such easements or rights-of-way, with the use of the Leased Premises under the terms of this Lease.

14. Right of Entry. The City or its representatives shall have the right to enter upon the Leased Premises at any reasonable time for the following purposes:

- a. To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Lease or in the exercise of its municipal powers.
- b. For the purpose of performing activities related to any private or public improvement or project, without cost or liability to the City or any employee, officer, official, or agent of the City for any crops which may be damaged in connection therewith. While the City will strive to exercise reasonable care to minimize damage to crops, the Lessee waives and agrees to hold the City, its employees, officers, officials, and agents harmless from any claims for damages arising out of such activities, including any claims based upon a failure to exercise reasonable care.

15. Termination.

The City shall have the right, at its sole option, to declare this Lease void, terminate the same, reenter and take possession of the Leased Premises by giving the Lessee thirty (30) days written notice, upon or after any one of the following events:

- a. The filing by the Lessee of a voluntary petition in bankruptcy.
- b. The institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings.
- c. The taking by a court of competent jurisdiction of the Lessee's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act.
- d. The appointment of a receiver of the Lessee's assets.
- e. The divestiture of the Lessee's estate herein by other operation of law.

- f. The abandonment by the Lessee of the Leased Premises.
- g. The use of the Leased Premises for an illegal purpose.
- h. Upon lapse or failure of any insurance coverage required by this Lease.
- 1. In the event the Lessee defaults in the performance of any other term or condition of this Lease.

The termination shall not be effective if, within such thirty (30) day period, the event giving rise to the City's right to terminate ceases to exist. In the event of a breach of a term, covenant or condition of this Lease which requires more than the payment of money to cure and which cannot, because of the nature of such default, be cured within said thirty (30) days, then the Lessee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Lessee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

Notwithstanding the foregoing, and without prejudice to any other right or remedy, upon lapse or failure of any insurance coverage required by this Lease the City may, at its option, purchase or pay for any insurance coverage required by this Lease and charge the Lessee the cost of same as additional rent. Any amount paid by the City hereunder shall be repaid by the Lessee to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.

- 16. No Waiver. Failure or delay on the part of either party to enforce any of the terms, covenants, conditions or agreements hereof shall not operate as a waiver thereof nor void or affect the right of the party to enforce the same upon any subsequent default or breach. Except as otherwise provided in this Lease, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rules of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.
- 17. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the Lessee's rights in the Leased Premises shall cease, and the Lessee shall immediately surrender the Leased Premises, subject to the provisions of Paragraph 18.
- 18. Removal and Disposal of Personal Property. Upon the expiration or termination of this Lease, the Lessee shall remove all of its personal property from the Leased Premises. If the Lessee leaves any of its personal property on the Leased Premises, the City shall have the right to dispose of said property without liability thirty (30) days after the Lessee vacates or abandons the Leased Premises.
- 19. Hold Over. In the event the Lessee shall continue to occupy or use the Leased Premises after the expiration of this Lease or any renewal or extension thereof, such holding over shall be deemed to constitute a tenancy from month to month, upon the same terms and conditions as herein provided except that rent equal to one-twelfth (1/12) of the annual rent multiplied by two (2) shall be paid monthly in advance, and in no event shall the tenancy be deemed to be year to year.

20. Lessee Waivers.

- a. In the event of the Lessee's vacation of the Leased Premises or if the City terminates this Lease pursuant to the provisions of this Lease, the Lessee hereby waives any rights against the City that may be construed to accrue to the Lessee, its successors and assigns, by provisions of Section 32.19 of the Wisconsin Statutes, as amended.
- b. In the event the City condemns the Lessee's interest in the Leased Premises, the Lessee agrees that the award, including damages, for all of its interests shall be Zero Dollars (\$0), and further waives all relocation benefits of every kind and nature.
- c. In the event the Leased Premises, or any portion thereof, shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of the leasehold, reversion and fee, shall belong to the City without any deduction therefrom for any present or future estate of the Lessee, and the Lessee hereby assigns to the City all of its right to recover from the condemning authority such compensation as may be separately awarded to the Lessee on account of interruption of the Lessee's business and for moving and relocation expenses.

21. Definition of City and Lessee. The terms "City" and "Lessee" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Lease shall bind the parties mutually, their heirs, personal representatives, successors and assigns.

22. Authorized Agent. The City's Economic Development Division Director or the Director's designee is hereby designated as the official representative of the City for the enforcement of all provisions in this Lease, with authority to administer this Lease lawfully on behalf of the City.

23. Notices. All notices to be given under the terms of this Lease shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City:                      City of Madison  
                                         Office of Real Estate Services  
                                         Madison Municipal Building  
                                         215 Martin Luther King, Jr. Boulevard  
                                         P. O. Box 2983  
                                         Madison, WI 53701-2983

For the Lessee:

[REDACTED]  
[REDACTED]  
[REDACTED]

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notice shall be given.

24. Non-Discrimination. In the performance of its obligations under this Lease, the Lessee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
25. Severability. If any term or provision of this Lease or the application thereof to the City or the Lessee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to the City or the Lessee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Lease shall be valid and be enforceable to the fullest extent permitted by law.
26. Entire Agreement. All terms and conditions and all negotiations, representations and promises with respect to this Lease are merged into this Lease. No alteration, amendment, change, or addition to this Lease shall be binding upon the parties unless in writing and signed by them.
27. Execution. This Lease may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Lease. A signed copy of the Lease transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. This Lease may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Lease may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Lease, fully executed, shall be as valid as an original.
28. Public Record. This Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the parties.
29. Applicable Law. This Lease shall be interpreted by the laws of the State of Wisconsin.

[SIGNATURES ON NEXT TWO PAGES ARE NOT INCLUDED]

**DANE COUNTY  
L E A S E**

THIS LEASE, made and entered into by and between the County of Dane (hereinafter referred to as "LESSOR") and \_\_\_\_\_ ("LESSEE").

**W I T N E S S E T H**

WHEREAS LESSOR is the owner of certain real property partially described as follows:

\_\_\_\_\_ and  
\_\_\_\_\_

WHEREAS LESSEE desires to lease from LESSOR for the uses hereinafter set forth approximately \_\_\_\_\_ acres of the above-described land (said \_\_\_\_\_ acres hereinafter referred to as "the premises") and which are more particularly shown on the attached Conservation Plan Map;

THEREFORE, in consideration of the above conditions and the mutual covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged by each party for itself, LESSOR and LESSEE do agree as follows:

**Section 1. TERM.** LESSOR does hereby demise and lease the premises to LESSEE for a term of four (4) years, commencing as of the first day of January, 2017 and ending on the 31<sup>st</sup> day of December, 2020. LESSOR or LESSEE may terminate the lease without penalty at the end of any crop year.

**Section 2. PUBLIC ACCESS TO PREMISES.** LESSOR may provide public access to all or a portion of the premises. Public access may include, without limitation, recreational use, areas for the parking of vehicles, trails for pedestrian ingress and egress and fencing and gating of such areas and trails. To the extent such access prevents or substantially interferes with LESSEE'S use of a portion of the premises for agricultural purposes, LESSOR shall reduce the number of acres under the lease, and the rent shall be reduced accordingly.

**Section 3. INTENDED USE AND PROVISIONS.** The intended use and sole permitted use of the premises by the LESSEE is for organic farming and approved organic production.

**Section 4. LESSEE OBLIGATIONS.** Throughout the term of this lease, LESSEE shall crop, operate, and maintain the premises according to the Conservation Plan developed by the Dane County Land & Water Resources Department (LWRD) and no-till standards in NRCS Technical Standard 329.

LESSEE shall collect soil samples in accordance with UW A21000 recommendations and submit results to (LWRD) within the first year of this lease contract, but no later than June 1, 2017.

LESSEE shall also submit to LWRD by June 1, 2017 a nutrient management plan developed according to the USDA Natural Resource Conservation Service standards and specifications. LESSEE shall confer with LWRD on land management issues or changes in land practices.

LESSEE shall comply with the standards and rules and regulations of the USDA National Organic Program (NOP) [Code of Federal Regulations, Title 7] and to provide LESSOR annually with copies of all materials, records and reports showing that compliance.

LESSEE is not required to become certified as an organic producer, but must follow federal organic standards, including maintaining detailed records that are provided to LESSOR annually.

No phosphorus may be applied except as approved in the Nutrient Management Plan.

Manure application and crop rotation will be determined by the Nutrient Management Plan and Conservation Plan. Spreading of manure on snow-covered or frozen ground is prohibited.”

LESSEE shall cut, spray or otherwise control Canada thistles before they go to seed and cut or control weeds in lots and along roadsides whenever necessary to prevent reseeding.

Trimming or removal of trees is strictly prohibited unless permission is granted by LESSOR.

LESSEE shall not store automobiles, trucks, tractors or bulk fuel on the leased premises or otherwise violate restrictions of LESSOR’s insurance contract or local ordinances.

**Section 5. SECURITY OF PREMISES.** LESSEE shall be solely responsible for security for the premises and shall indemnify, defend and hold harmless LESSOR from any and all damages, losses and expenses LESSOR may suffer as a result of any litigation or claim for injuries suffered by any person or persons occurring as a result of alleged lack of security for the premises.

**Section 6. NO MUTUAL INDEMNIFICATION.** Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, boards, commissions, agencies, officers and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors or omissions, including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives.

**Section 7. RENTAL PAYMENTS.** In consideration of LESSOR’s agreement to lease the premises, LESSEE agrees to pay as rent on the [REDACTED] acres only the amount of \$172.26 per acre per year, for a total of \$4,100.00 annually. Payments, in equal installments of \$2,050.00 are due and payable on the first day of March and the first day of June commencing March 1, 2017 and continuing for the duration of the lease. Checks payable to Dane County Treasurer shall be sent to 5201 Fen Oak Drive, Madison, WI 53718. Time is of the essence with respect to rental payments. Failure to make timely rental payments may result in termination of the lease and may also impact LESSEE’s ability to secure future leases

**Section 8. ADJUSTMENTS.** There shall be no rental rate adjustments during the term of the lease. LESSEE agrees that LESSOR may reduce the number of acres under the lease with notice to LESSEE.

Acreage adjustments also may be made upon mutual agreement between LESSEE and LESSOR.

**Section 9. NOTICES.** All payments and notices required to be sent under this agreement shall be deemed delivered as of the date of postmark. Notices to LESSOR shall be sent to Dane County Land & Water Resources Department, Attn: Crop Lease, 5201 Fen Oak Drive, Madison, WI 53718. Notices to LESSEE shall be sent to [REDACTED].

**Section 10. NO SUBLET, ASSIGNMENT, RENEWAL.** There shall be no sublet, assignment or automatic renewal of this lease unless in writing, consented to by LESSOR.

**Section 11. CONDITION OF PREMISES.** LESSEE has inspected the premises and is familiar with the condition thereof and accepts the same as being in a good condition. LESSEE agrees to maintain the premises in their present condition and to deliver the same in as good a condition at the termination of this lease. In its use of the premises, LESSEE shall follow the soil conservation plan for the premises and to follow those practices recommended by LWRD. LESSEE shall preserve established water courses, tile drains, tile outlets, grass waterways and terraces and shall refrain from any operation that will injure them.

**Section 12. USE OF PREMISES, TERMINATION.** LESSEE shall not perform any acts or carry on any practices which may injure the premises or be a nuisance or menace to neighboring property. LESSEE shall comply with all laws, statutes, ordinances, rules and regulations of any agency of government having authority or jurisdiction over the premises.

If LESSEE shall fail to fulfill in timely and proper manner his obligations under this agreement, including timely payment of rent, LESSOR shall have the right to terminate this agreement as described below.

Violation of any provision of this section shall constitute grounds for termination of this lease by LESSOR on thirty (30) days' advance written notice containing the reasons for the termination.

In the event of cancellation, rent already paid shall be returned to LESSEE on a prorated basis. LESSOR or LESSEE may terminate this lease without penalty at the end of any crop year.

**Section 13. END OF TERM SURRENDER OF PREMISES.** LESSEE shall peaceably surrender the premises at the end of the term of this lease and shall pay reasonable attorney fees for LESSOR in default of such obligation.

**Section 14. EXCLUDED ACREAGE.** Adjoining lands of LESSOR are not included in this lease.

**Section 15. INSURANCE.** LESSEE shall at all times during the term of this Agreement keep in full force and effect comprehensive general liability insurance and automobile liability insurance in the amounts of at least \$500,000. LESSEE shall also insure or otherwise protect itself against losses by fire, theft, or other cause of any personal property of LESSEE, its agents, employees or officers which is located on the demised premises. As evidence of this coverage, LESSEE shall furnish to LESSOR a certificate of insurance naming LESSOR as an additional insured.

**Section 16. LESSOR'S AUTHORIZED AGENT.** All written authorizations on the part of LESSOR necessitated by this agreement or requested by LESSEE shall be made only by the Director or Deputy Director, Dane County Land & Water Resources Department, 5201 Fen Oak Drive, Madison, WI 53718.

**Section 17. NONDISCRIMINATION.** During the term of this lease, LESSOR and LESSEE agree, in accordance with Chapter 19 of the Dane County Code of Ordinances, not to discriminate on the basis of race, religion, color, sex, handicap, age, sexual preference, marital status, physical appearance, or national origin against any person, whether a tenant or applicant for tenancy, a customer, an employee or an applicant for employment. Such equal opportunity shall include but not be limited to the following: renting, leasing, employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, or any other form of compensation. 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 by state or federal law.

**Section 18. EQUAL OPPORTUNITY EMPLOYER AND LANDLORD.** LESSOR and LESSEE shall, in all solicitations for employment or tenancy placed on either's behalf, state that LESSOR or LESSEE is an "Equal Opportunity Employer" and complies with the Federal Fair Housing Act of 1968.

**Section 19. AFFIRMATIVE ACTION.** Contracts estimated to be Ten Thousand Dollars (\$10,000) or more require the submission of a written affirmative action plan. Within fifteen (15) days after the award of the contract, the plan shall be submitted for approval to LESSEE. Landlords with an annual work force of fewer than ten (10) employees are exempted from this requirement.

**Section 20. SIGNS NOT PERMITTED.** Except in designated areas, LESSEE shall not post signs or erect any signs of any kind upon the premises without the prior written consent of LESSOR.

**Section 21. TITLES FOR CONVENIENCE ONLY.** The various headings and titles used as section headings herein are for convenience and ease of reference only and shall have no substantive effect whatsoever on the agreement of the parties.

IN WITNESS THEREOF, LESSOR, by its authorized agent, and LESSEE have set their hands and seals as of the day and date on which both parties have caused this agreement to be executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016

LESSEE

LESSOR

BY: \_\_\_\_\_

—

BY: \_\_\_\_\_

—

Joseph T. Parisi  
COUNTY EXECUTIVE

BY: \_\_\_\_\_

—

Scott McDonnell  
COUNTY CLERK

# **DANE COUNTY**

## **ADDENDUM A**

### **OPERATIONS AND MAINTENANCE PLAN**

#### **GRADE STABILIZATION STRUCTURE**

I agree to the following for the duration of my lease with Dane County:

- 1) Mow grasses to approximately 8 inches when possible.
- 2) Control weeds and invading brush.
- 3) Inspect these practices frequently, especially after heavy rains. Fill and seed or add sod to small rills or gullies immediately upon noting damage.
- 4) Protect all practices from grass herbicide application or run-off.
- 5) Refrain from tilling the edge of the structures adjacent to the crop field.
- 6) Inspect the basin's perforated riser pipe and orifice after storms when possible. Remove all debris.
- 7) Inspect the basin for burrowing rodents and notify the County if present.

Initial:\_\_\_\_\_Date:\_\_\_\_\_