



## 1.0 General Policy

This policy addresses the need to establish permanent access, staging, and use of state financed new salt storage (sodium chloride) facilities. An aim of this policy is to have an agreed permanent record of available storage space for state owned salt. To meet this goal, all new storage facilities must have a signed Letter of Intent and other agreement(s) with the county prior to any bid LET notice going out for construction of salt storage facilities funded by the department. The policy addresses agreements necessary in an equitable way for both capital improvement, land lease and maintenance cost for all “scenarios” as listed below in section 2.0.

### 1.1 Finalized Agreements

All finalized agreements must be signed by appropriate county authority and the regional operations section chief along with either the State Highway Maintenance Engineer or Bureau of Highway Maintenance Director.

### 1.2 Building Requirements

For statutory building requirements see Policy 06-20-86 (Salt Shed and Loader Building Designs) and IBC building codes.

## 2.0 Definition of Facility

Scenario 1 – Salt Storage Facility constructed on county/locally owned land for state salt storage only

Scenario 2 – Salt Storage Facility constructed on county/locally owned land for shared state and county salt storage

Scenario 3 – Salt Storage Facility constructed on state land for state storage only

Scenario 4 – Salt Storage Facility constructed on state land for shared state and county salt storage

## 3.0 New Salt Storage (Sodium Chloride) Facilities

Agreements and supporting documentation are required when building new salt storage facilities. Identified below are the agreements and documents typically required for new salt storage facilities with county or local involvement, and typically follow the order below.

### A. Letter of Intent

The Letter of Intent ([Sample 1](#)) is typically 1-2 pages and provides the basic framework for moving forward with the design and construction of the storage facility and is signed by the County Highway Commissioner and WisDOT Regional Operations Chief Engineer. The document should include the following provisions:

1. Salt storage need and approximate size
2. Proposed location
3. Proposed costs share
4. Storage allocation for county and state based on functional capacity (state tonnage explicitly stated)
5. Maintenance and operations responsibilities
6. Land allotment (See section 4.0 of this policy for guidance.)

## B. Estimated Financial Statement

An Estimated Financial Statement ([Sample 2](#)) is a tool used to establish the anticipated salt shed storage capacity and itemization of the cost share between state and county, covering costs for:

- Engineering
- Construction
- Real Estate (Real estate appraisal is required as supporting documentation for estimated financial statement.)

Utility costs should not be included as part of the calculated project costs on the Estimated Financial Statement. Salt shed utility costs are included in the salt shed reimbursement formula and accounted for as part of the salt shed reimbursement per the terms of HMM 02-20-35.

## C. State/Municipal Agreement

State/Municipal Agreements (SMA) are required per Program Management Manual <http://dotnet/pmm/03/03-25-20e.pdf>. Regional staff should work with WisDOT Project Development when developing the SMA (project agreement) for improvement related projects. For more information on financing, see policy HMM 06-20-84.

## D. Long Term Lease Agreement

The long term lease agreement is a detailed agreement signed by the County Highway Department and WisDOT that provides the description and obligations of both parties for the proposed salt storage facility.

Typical items included are:

1. County and WisDOT responsibilities
2. Cost Share
3. Real Estate Ownership and Right of Entry
4. Disposition of shed shall either party no longer want to participate
5. Expected life of shed, typically 40 years with the option to renew
6. Insurance and liability requirements
7. Long term maintenance and operational responsibilities
8. Tax responsibility

Attached are two sample lease agreements ([Sample 3](#)) ([Sample 4](#)) – every site will have issues specific to the site so do not use these agreements verbatim. Work with Bureau of Highway Maintenance (BHM) to identify site specific concerns. Lease agreements must be forwarded to the Winter Maintenance Engineer in BHM for review and Office of General Council (OGC) concurrence.

Maintenance reimbursement is paid per the terms of policy HMM 02-20-35.

## E. Memorandum of Understanding

A Memorandum of Understanding ([Sample 5](#)) is a formal agreement between a County Highway Department and WisDOT establishing the terms and conditions of the maintenance and operational responsibilities at a state salt shed with only state storage. The agreement shall clearly define site access; utility responsibility; maintenance and repair responsibilities; on-site equipment needs, including equipment insurance requirements; and reimbursement for the performance of the responsibilities.

### **3.1 Scenario 1 - Facility Constructed on County/Locally Owned Land for State Salt Storage Only**

There must be a long term lease agreement when the state has financed construction of salt storage facility(s) on county land. The agreement shall be accompanied by an estimated financial statement illustrating the current "assessed" value of the land which includes an access, staging salt dumps, and loader and/or conveyor operations for use of the shed. The eligible acreage will be determined in section 4.0 of this policy.

The agreement will document exact location and access to the facility and have an estimated design function storage capability listed in "tons of salt".

The agreement will also document the method used by WisDOT to compensate the county for the lease of the land. This can be done in several methods:

- Monetary lease payments;
- Trade for salt storage at other state financed salt storage facilities;
- Other method agreed upon by the region and the county and approved by Bureau of Highway Maintenance (BHM)

This agreement will be a long term agreement which will cover at a minimum the estimated life of the storage facility along with the design percentage of state salt (later converted from design percentage to functional percentage in tons) to be available for storage during the term of the agreement.

This agreement must address maintenance and repair of shed (see HMM 02-20-35 and Trans 277) or if the county elects not to perform maintenance on this facility, the tons will be deducted from the formula used in policy 02-20-35 for reimbursement to the county. Other items that should be covered in the agreement are:

- |   |   |
|---|---|
| 1. Construction, Alteration or Refurbishment; | 8. Default;                             |
| 2. Renewal Terms;                             | 9. Duty to keep premises free of liens; |
| 3. Permitted Use;                             | 10. Termination;                        |
| 4. Utilities;                                 | 11. Indemnity;                          |
| 5. Insurance and Related Liabilities;         | 12. Environmental Matters;              |
| 6. Damage or Destruction;                     | 13. Miscellaneous Provisions            |
| 7. Taxes;                                     |   |

If a county elects NOT to sign a lease and maintenance agreement with the state, this policy prohibits the state from participating in any costs for an improvement of this type on county lands.

### **3.2 Scenario 2 - Facility Constructed on County/Locally Owned Land for Shared State and County Salt Storage**

There must be a long term lease agreement when the state has financed construction of salt storage facility(s) on county lands. This agreement shall be accompanied by an estimated financial statement illustrating the current "assessed" value of the land which includes an access, staging salt dumps, and loader and/or conveyor operations for use of the shed. The eligible acreage will be determined in section 4.0 of this policy.

The agreement will document exact location and access to the facility and have an estimated design function storage capability listed in "tons of salt".

This agreement will also define the storage capacity allocation estimated in percent of state and county storage capacity. The storage capacity percentage used in design calculations shall be the same percentage for functional capacity converted to tons.

The agreement will also describe the method used by WisDOT to pay for the lease of the land. This can be done in several methods:

- Monetary lease payments;

- Trade for salt storage at this location or other state financed salt storage facilities or combination. The trade in value will be ton for ton.
- Other method agreed upon by the region and the county and approved by Bureau of Highway Maintenance (BHM)

This agreement will be a long term agreement which will cover at a minimum the estimated life of the storage facility along with the amount of state salt (in percentage adjusted for tons) to be available for storage for the term of this agreement.

This agreement must address shed maintenance and repair (see HMM Section 02-20-35 and Trans 277). Other items that should be covered in the agreement are:

1. Construction, Alteration or Refurbishment;
2. Renewal Terms;
3. Permitted Use;
4. Utilities;
5. Insurance and Related Liabilities;
6. Damage or Destruction;
7. Taxes;
8. Default;
9. Duty to keep premises free of liens;
10. Termination;
11. Indemnity;
12. Environmental Matters;
13. Miscellaneous Provisions

If a county elects NOT to sign a lease agreement with the state, this policy prohibits WisDOT from participating in any costs for an improvement of this type on county lands.

### **3.3 Scenario 3 - Facility Constructed on State Land for State Storage Only**

Prior to the completion of the salt shed construction, there should be a Memorandum of Understanding (MOU) documenting the relationship between the department and the county regarding matters like maintenance responsibilities and reimbursement for the performance of those responsibilities, access to the site, insurance for machinery, onsite equipment requirements, utilities, and other pertinent information.

In those instances where a county will not be performing maintenance responsibilities, another entity may be employed and its responsibilities need to be established contractually.

### **3.4 Scenario 4 - Facility Constructed on State Land for State and County Salt Storage**

There must be a long term lease agreement when the state has financed construction of salt storage facility(s) on state lands. This agreement shall be accompanied by an estimated financial statement illustrating the current "assessed" value of the land which includes an access, staging salt dumps, and loader and/or conveyor operations for use of the shed. The eligible acreage will be determined in section 4.0 of this policy.

The agreement will also show how the county has paid for their portion of the land and capital improvement and their percentage of salt storage. This can be done in several methods:

- Monetary;
- Trade for salt storage at other county financed salt storage facilities on a ton for ton basis;
- Participation in preparing the site for construction;
- Other method agreed upon by the region and the county and approved by Bureau of Highway Maintenance (BHM)

This agreement will also define the storage capacity allocation estimated in percent of state and county storage capacity. The storage capacity percentage used in design calculations shall be the same percentage for functional capacity converted to tons.

This agreement must address maintenance and repair of the shed (see HMM 02-20-35 and Trans 277). If the county elects not to perform maintenance on this facility, there can be no storage agreement with the county.

#### 4.0 Land in Acreage Eligible for Lease or Capital Improvement

Table 4.0 below illustrates the maximum land necessary to access, staging salt dumps, and loader and/or conveyor operations for salt storage use of the shed. This also includes land necessary to house a loader and added brine tanks. This is an estimate to be used equitably for both facilities constructed on state or county lands.

Table 4.0 – Salt Shed Land Size Eligible for Formula

| Design Capacity            | Maximum Acres Eligible<br>(for the agreement and<br>computations) |
|----------------------------|---|
| 0-3,000 tons of salt       | 3.0 acres   |
| 3,001 – 5,000 tons of salt | 4.0 acres   |
| Over 5,001 tons            | 5.0 acres   |

In cases where a larger shed is constructed and the acreage does not meet the maximum allowed, value of the land will be assessed on actual acreage. The acreage figures above are rules of thumb and represent maximums. In practice, smaller amounts of acreage are likely and values should be adjusted accordingly. For example, in cases where a larger shed is constructed and the acreage does not meet the maximum allowed, value of the land will be assessed on actual acreage.

All final executed agreements will be filed in two locations:

- The regional transportation office in which the sodium chloride facility is located both in hard copy and electronic.
- The Bureau Highway Maintenance Wisconsin Department of Transportation – electronic version.

#### 5.0 Salt Storage Memorandum of Understanding (MOU)

There should be a standing MOU ([Sample 5](#)) for each county, detailing state and county storage capacities. MOUs will remain in effect until a new agreement is in place.

Changes could occur for a variety of reasons and an updated agreement is required to validate that existing storage needs are being met. A new MOU is required every time there is a change in storage in the county.

If there are no storage capacity changes, it is recommended MOUs be updated with new signatures every five years.

#### 6.0 Storage and Filing of These Agreements

All final executed agreements will be filed in two locations:

- The regional transportation office in which the sodium chloride facility is located both in hard copy and electronic
- The Bureau of Highway Maintenance Wisconsin Department of Transportation Sharepoint site – electronic version.

See the Operations RDA for retention requirements.

Sample 1

LETTER OF INTENT TO CONTRACT

Between
[ ] County, Wisconsin
And
Wisconsin Department of Transportation
Regarding
Road Salt Storage Facility

Pursuant to statutory authority under Wis. Stat. §§ 84.01(13), 84.07, 84.09, and 85.15, the Wisconsin Department of Transportation ("Tenant" or "WisDOT") and [ ] County ("Landlord" or "County") intend to enter a Lease Agreement providing for the planning, funding, construction, accessing, and use of a road salt storage facility ("facility"). The basic terms of the Lease Agreement the parties intend to execute may be described as follows:

- 1. The facility will be located in [ ], Wisconsin at or near the intersection of XXX and XXX. Construction of the facility is estimated to take place between CY 2015 and 2016.
2. The facility will have a capacity allocation of approximately 3,000 tons. The facility will be constructed on land owned by the County. WisDOT in partnership with [ ] County, will own the facility. WisDOT will use 2000 tons of the capacity allocation, and the County will use the balance.
3. WisDOT and [ ] County will fund the cost of building the facility as per Cost share agreement. WisDOT and the County will repair and maintain the facility and share in associated costs according to WisDOT's Highway Maintenance Manual Section 02-20-35, attached hereto as Exhibit A. The County will provide the land necessary on which the facility will be constructed and pay for all utility costs of the facility during the life of the Lease Agreement and any renewal. The County will obtain all necessary permits prior to WisDOT commencing the bidding process for the construction of the facility. In addition, the County has/will prepare the building site and complete all the asphalt paving inside and around the shed as necessary.

This preliminary and non-exhaustive Letter of Intent is not binding on the parties. The Lease Agreement the parties intend to execute will govern and more thoroughly describe the parties' responsibilities and obligations.

IN WITNESS WHEREOF, the parties hereto have executed this Letter of Intent on the dates shown below.

Landlord:

[ ] County Commissioner

By: [X]

Dated this \_\_\_ day of [X], 201[X]

Tenant:

Wisconsin Department of Transportation
Regional Operations Manager

By: [X]

Dated this \_\_\_ day of [X], 201[X]

Wisconsin Department of Transportation
Statewide Maintenance Engineer

By: [X]

Dated this \_\_\_ day of [X], 201[X]

Sample 2

ESTIMATED FINANCIAL STATEMENT

Salt Shed Facility Location: **Sample County**, USH 999 - Townville

Date: Monday, May 04, 2020

**DESCRIPTION OF WORK: This work consists of a 5,000 ton Standard Truss<sup>1</sup> Salt Shed built on County Land**

|                            |  | <u>Funding - State<br/>Estimate</u> | <u>Funding - County<br/>Estimate</u> | <u>Total<br/>Estimate</u> |
|----------------------------|--|-------------------------------------|--------------------------------------|---------------------------|
| <b><u>ENGINEERING</u></b>  |  |                                     |                                      |                           |
| Design                     |  |                                     |                                      |                           |
|                            | Engineering (InHouse)                                      | \$ 1,000                            | \$ 1,000                             | \$ 2,000                  |
|                            | Engineering (Consultant Costs)                             | \$ -                                | \$ 24,000                            | \$ 24,000                 |
| Construction               |  |                                     |                                      |                           |
|                            | Engineering (InHouse)                                      | \$ 1,000                            | \$ 1,000                             |                           |
|                            | Engineering (Consultant Costs)                             | \$ -                                | \$ 24,000                            | \$ 24,000                 |
|                            | <b>TOTALS</b>  | <b>\$ 2,000</b>                     | <b>\$ 50,000</b>                     | <b>\$ 52,000</b>          |
| <b><u>CONSTRUCTION</u></b> |  |                                     |                                      |                           |
|                            | Site Preparation   | \$ -                                | \$ 50,000                            | \$ 50,000                 |
|                            | Local Building Permits (If Necessary)                      | \$ -                                | \$ 1,500                             | \$ 1,500                  |
|                            | Salt Shed (including utility installation) (5,000 ton)     | \$ 600,000                          |                                      | \$ 600,000                |
|                            | Loader Shed (if needed and including utility installation) | \$ -                                | \$ -                                 | \$ -                      |
|                            | <b>TOTALS</b>  | <b>\$ 600,000</b>                   | <b>\$ 51,500</b>                     | <b>\$ 651,500</b>         |
| <b><u>REAL ESTATE</u></b>  |  |                                     |                                      |                           |
|                            | Acres Used/Needed (say 4.0 acres)                          | \$ -                                | \$ 80,000 <sup>2</sup>               | <b>\$ 80,000</b>          |
|                            | USH 999 - 1.2 Miles East of Townville                      |                                     |                                      |                           |
|                            | <b>TOTAL PROJECT COSTS</b>                                 | <b>\$ 602,000</b>                   | <b>\$ 181,500</b>                    | <b>\$ 783,500</b>         |
|                            | Percentage of Costs  | 76.83%                              | 23.17%                               |                           |
|                            | <b>Tons of Storage</b>                                     | <b>3,842</b>                        | <b>1,158<sup>3</sup></b>             |                           |

<sup>1</sup>-Salt Shed Building Types include; Dome, Standard Truss, High Arch Truss, Crib or Canvass Roof

<sup>2</sup>-Value of land should be estimated from DOT Real Estate Section. (acres X average value of land for that county or area )

<sup>3</sup>-Tons of Storage in this box must add up to the tons (estimated) stated above in the Description of Work.

### Sample 3

**LEASE AGREEMENT**  
Between  
**[ ] County, Wisconsin**  
And  
**Wisconsin Department of Transportation**  
Regarding  
**Road Salt Storage Facility**

#### Section 1: Lease Agreement

This lease agreement ("Lease") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between [\_\_\_] County ("Landlord" or "County") and the Wisconsin Department of Transportation ("Tenant" or "WisDOT") pursuant to Tenant's statutory authority under Wis. Stat. §§ 84.01(13), 84.07, 84.09, and 85.15. Tenant needs the leased premises, as described in Section 2.4, below, to construct a road salt storage facility. The leased premises represent the best location for such a facility based on Tenant's operational needs. Tenant owns no comparable real estate suitable for this purpose. In consideration of the mutual promises and covenants contained in this Lease, Landlord and Tenant agree:

#### Section 2: Basic Lease Provisions

- 2.1 Definitions:** As used in this Lease unless the context requires another interpretation:
- 2.1.1** "Access" or "accessibility" means the ability to freely use the allocated capacity for state salt storage.
  - 2.1.2** "Capacity allocation" or "allocated capacity" means the agreed upon portion, measured in percentage, of the facility's functional capacity designated for the storage of salt for use on the state trunk and interstate highway systems and the capacity allocated for the storage of salt for use on county trunk or other roadways.
  - 2.1.3** "Financed" means the provision of funds to develop design and plans, purchase land or materials, pay for construction, or any combination thereof by one party or jointly among the parties. The term "financed" does not include payments by Tenant to Landlord for salt storage under the routine maintenance Authority for Expenditure Agreement or the Sodium Chloride Reimbursement, Section 02-20-35 of the State Highway Maintenance Manual.
  - 2.1.4** "Hazardous substances" means any substance that is toxic, ignitable, reactive, or corrosive, and whose storage, handling, disposal, or transport is regulated by federal, state, or local statute, rule, regulation, or ordinance and shall include any material or substance that is defined as "hazardous waste," "extremely hazardous waste," or "hazardous substance" pursuant to federal, state, or local statute, rule, regulation, or ordinance, including, but not limited to, asbestos, polychlorinated biphenyls ("PCBs") and petroleum products.
  - 2.1.5** "Ownership" means the land or building or equipment or any combination thereof titled or otherwise documented in the name of the county, state, or any agency thereof.
  - 2.1.6** "Substantive refurbishment" means major repairs and maintenance. It is further defined as repairs costing in excess of the road salt storage facility's remaining residual value or typically 15% of the original purchase price of such facility.
- 2.2 Landlord:** [XYZ] County, Wisconsin, [Address].
- 2.3 Tenant:** Wisconsin Department of Transportation, [Address].
- 2.4 Leased Premises:** Approximately [X] square feet of Landlord's property described as [legal description] ("leased premises") as shown in **Exhibit A** attached hereto.
- 2.5 Lease Term:** Forty (40) years ("initial term"). Further, the parties shall have the option to renew this Lease beyond the initial term as described in Section 5, below ("renewal term").
- 2.6 Occupancy Commencement Date:** [Month] [X], 201[X].



- 2.7 Occupancy End Date [Initial Term]:** [Month] [X], 20[XX]. Landlord shall provide Tenant evidence of any appropriate certificate of occupancy and use or other authorizations required by local ordinances or regulations for Tenant's occupancy and use of the leased premises as a road salt storage facility.
- 2.8 Rent:** Tenant shall authorize Landlord to occupy 20% of the tonnage of the total capacity allocation of the road salt storage facility described in Section 4.1 below during the initial term and any renewal term. This allowance shall constitute the rent Tenant pays to Landlord. Tenant shall owe Landlord no additional form of rent payment in the event Landlord chooses not to occupy 20% of the tonnage of the total capacity allocation of the road salt storage facility described in Section 4.1 below at any point in the initial term and any renewal term.

### **Section 3: Maintenance Payment**

Tenant shall pay Landlord a lump sum payment for maintenance of the leased premises and the road salt storage facility described in Section 4.1 below on April 1 of every year during the initial term and any renewal term. Such payments shall be calculated according to WisDOT's Highway Maintenance Manual Section 02-20-35, attached hereto as **Exhibit B** attached hereto. As a matter of law applicable to Tenant, the payment described in this Section 3 is subject to the availability of appropriated funds that may be lawfully used for such payment. Tenant will obligate funds for the initial term of this Lease upon execution of this Lease. Tenant will obligate funds for any renewal term of this Lease upon providing the notice required in Section 5, below. These obligations do not constitute the contracting of public debt under Article VIII, Section 4 of the Wisconsin Constitution.

### **Section 4: Construction, Alteration, and Refurbishment**

- 4.1 Construction and Alteration:** Tenant shall have the right to construct and subsequently alter, with Landlord's advance written consent (not to be unreasonably withheld or delayed) a road salt storage facility having a total capacity allocation of 5,000 tons on the leased premises ("facility"). The facility's construction and subsequent alteration, if any, shall be financed solely by Tenant, made in compliance with all laws, regulations, codes, and assigned specifications as shown in **Exhibit C** attached hereto, and shall be completed in a safe and workman like manner with new, first class materials. Upon installation, the facility shall become and remain the Tenant's property. Tenant expects the facility to have a projected services life of 50 years. Tenant shall agree with Landlord annually to reserve Landlord's tonnage percentage of the facility for storage of Landlord's salt, in accordance with Section 2.8, above.
- 4.2 Refurbishment:** If the facility's service life exceeds the 50 year service life WisDOT originally projected, WisDOT and County may have the option to engage in a substantive refurbishment of the facility as agreed to by WisDOT and the County. The substantive refurbishment of the facility shall be financed by County on terms mutually agreeable to WisDOT and County. Nothing in this Section 4.3 limits the provisions contained in Section 5, below.
- 4.3 Relocation:** In the event County elects to discontinue operations at this site, County may terminate this Lease by providing thirty (30) days written notice to Tenant. County shall provide WisDOT, at County's expense, equivalent road salt storage capacity at a mutually agreeable location(s) or repay the depreciation expenses WisDOT incurs under Section 7.2, below.

### **Section 5: Renewal Term**

So long as neither Landlord nor Tenant is not in material default under this Lease or any other agreement between the parties, this Lease shall automatically renew for an additional 10 year term as of the expiration of the initial term upon the same terms and conditions unless either Landlord or Tenant gives not less than one hundred and twenty (120) days written notice to the other party prior to the expiration of the initial term. Such written notice shall be made in accordance with Section 17.3, below.

### **Section 6: Permitted Use**

Subject to any applicable federal, state, and local laws and regulations, Landlord and Tenant shall use the leased premises and the facility ("said locations") for storing sand and/or a sand/salt mixture as designated by WisDOT, at its sole discretion, in furtherance of highway maintenance operations. Said locations shall not be open to the public.

## Section 7: Customary Maintenance and Repair, Depreciation, and Capacity Allocation

- 7.1 Customary Maintenance and Repair:** Landlord shall customarily maintain and repair the facility with reasonable dispatch with the funds it receives under Section 3, above. If the costs of maintenance and repair are less than the sum of the funds Landlord receives under Section 3, above, Landlord may retain the remainder. If the costs of maintenance and repair are more than the sum of the funds Landlord receives under Section 3, above, Landlord shall pay for the outstanding balance.
- 7.2 Depreciation:** Tenant shall share in the depreciation costs for the facility when WisDOT's salt purchases for the year exceed WisDOT's capacity in the facility. The share is determined by multiplying depreciation costs by the ratio of WisDOT purchases (in tons) exceeding WisDOT capacity to total purchases less WisDOT capacity.
- 7.3 Tenant's and Landlord's Capacity Allocation:** Tenant shall occupy 80% of the capacity allocation of the road salt storage facility described in Section 4.1, above, during the initial term and any renewal term. In accordance with Section 2.8, above, Tenant shall authorize Landlord to occupy 20% of the capacity allocation of the road salt storage facility described in Section 4.1, above, during the initial term and any renewal term.

## Section 8: Utilities

Landlord shall pay or cause to be paid all charges for water, sewerage, gas, electricity, waste disposal, heat or other fuel or power or any other utility or serviced delivered to or used in connection with the said locations or Tenant's occupancy thereof.

## Section 9: Insurance and Related Liability

- 9.1 Landlord's Insurance:** Landlord shall obtain and carry at all times during the initial term and any renewal term of this Lease a policy for bodily injury and property damage liability insurance, to the satisfaction of Tenant, insuring the facility at its full replacement value. All insurance must be procured from insurance companies licensed or approved to do business in the State of Wisconsin. Landlord shall furnish Tenant with a certificate of insurance establishing that such insurance is in effect before execution of this Agreement.
- 9.2 Tenant's Insurance:** Tenant is self-insured. WisDOT's Self-Funded Liability and Property Programs protect WisDOT. County employees may not file workers' compensation claims against WisDOT's insurance policy.
- 9.3 Landlord's Liability:** If the facility (or any part thereof) is damaged or destroyed, Landlord will be held fully liable and financially responsible, in accordance with Section 10, below.
- 9.4 Tenant's Liability:** Wisconsin Stat. § 895.46 provides that WisDOT pays for certain negligence claims against WisDOT's employees and agents. WisDOT as the contracting entity maintains sovereign immunity. WisDOT cannot waive sovereign immunity, indemnify, or waive subrogation or liability in any manner.

## Section 10: Damage or Destruction

If the facility (or any part thereof) is damaged or destroyed by casualty covered by insurance or highway maintenance operations Landlord performs negligently, then this Lease shall remain in full force and effect, and Landlord shall fully repair or restore the facility (or any part thereof) with reasonable dispatch. If the facility (or any part thereof) is damaged or destroyed by neither casualty covered by insurance nor highway maintenance operations Landlord performs negligently, Tenant may terminate and cancel this Lease by giving written notice to Landlord within sixty (60) days after the occurrence of such damage or destruction or engage in a substantive refurbishment of the facility as provided in Section 4.2, above.

## Section 11: Taxes

**11.1 Personal Property Taxes:** Tenant is not subject to personal property taxes as provided in Wis. Stat. § 70.11(1). Tenant shall respond to any claims that it has failed to pay, before delinquency, all taxes, assessments, license fees, and other charges (“taxes”) that are mistakenly levied and assessed against Tenant's personal property installed or located on the leased premises or in the facility and that are alleged to become payable during the term of this Lease.

**11.2 Real Property Taxes:** Tenant is not subject to real property taxes as provided in Wis. Stat. § 70.11(1).

## Section 12: Default

**12.1 Tenant's Default:** All of the following shall be considered events of Tenant's default:

**12.1.1.** Tenant shall fail to perform any of the covenants or conditions herein contained on the part of Tenant, and such default shall continue for thirty (30) days after Landlord gives Tenant written notice thereof (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such default, if such default cannot be cured within such thirty (30) day period, and provided Tenant commences the process of curing such default within said thirty (30) day period and continuously and diligently pursues such cure to completion); or

**12.1.2.** If this Lease shall, by act of Tenant or by operation of law or otherwise, pass to any party other than Tenant without consent of Landlord.

**12.2 Landlord's Remedies:** If Tenant defaults, as set forth in Section 12.1, subject to the applicable cure periods stated therein, Landlord shall have and may exercise the following rights:

**12.2.1.** Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term, or condition required hereby to be performed by Tenant, and Landlord shall have the right to correct or remedy any such default.

**12.2.2.** Landlord may enter said locations immediately and remove the Tenant's property and store said property in a public warehouse or at a place selected by Landlord until Tenant cures its default.

**12.2.3.** On termination, but only to the extent permitted by law applicable to Tenant, Landlord may seek remedies from Tenant relating to the breach.

**12.3 Landlord's Default and Tenant's Remedies:** If Landlord shall fail to perform any of the covenants or conditions required to be performed by it under this Lease, and such default shall continue for thirty (30) days after Tenant gives Landlord written notice thereof (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such default, if such default cannot be cured within such thirty (30) day period, and provided Landlord commences the process of curing such default within said thirty (30) day period and continuously and diligently pursues such cure to completion), Tenant may, but shall not be obligated to, remedy such default. Upon Tenant's demand, Landlord shall pay Tenant all reasonable sums expended or obligations incurred by Tenant in connection therewith. Notwithstanding the foregoing, Tenant shall have and may exercise any and all rights provided in law or equity.

**12.4 Waiver of Failure to Declare Default:** A waiver by either party of a breach or default by the other under the terms and conditions of this Lease shall not be construed to be a waiver of any subsequent breach or default, nor of any other term or condition of this Lease, and the failure of a party to assert any breach or to declare a default by a party shall not be construed to constitute a waiver thereof so long as such breach or default continues unremedied.

## Section 13: Duty to Keep Premises Free of Liens

Tenant shall not permit any mechanics', laborers', materialmans', or other liens to stand against said locations, and the equipment for any labor or material furnished to said locations, in connection with work of any character performed or claimed to have been performed on said locations, whether such work performed or materials furnished prior to or subsequent to the commencement of this Lease. Tenant and Landlord shall properly and fully pay and discharge any and all claims on which a lien against said locations may or could be based.

## Section 14: Termination

- 14.1.** This Lease shall terminate upon the earlier of the following:
- 14.1.1.** Expiration of the initial term (i.e., 40 total years) if either Landlord or Tenant provides the written notice required in Section 5 indicating it does not wish to automatically renew this Lease;
  - 14.1.2.** Expiration of the renewal term if this Lease is automatically renewed as generally provided in Section 5 (i.e., 50 total years);
  - 14.1.3.** Upon Tenant's election, after having given Landlord sixty (60) days notice prior written notice;
  - 14.1.4.** June 30, 2018, if the facility is not constructed by that time; or
  - 14.1.5.** As otherwise provided in this Lease.

## **Section 15: Indemnity**

- 15.1. Indemnification of Landlord:** Wisconsin law prohibits Tenant from entering into any indemnification agreements whereby Tenant would indemnify Landlord (or any of its directors, shareholders, officers, members, managers, employees, agents, or representatives).
- 15.2. Indemnification of Tenant:** Landlord shall indemnify, defend, and hold Tenant (and its directors, shareholders, officers, employees, agents, and representatives) harmless from and against all claims, actions, damages, liability, and expenses (including reasonable attorneys' fees and actual costs) arising from, out of, or in connection with the loss of life, personal and bodily injury, and damage to property arising from any accident or occurrence upon said locations, caused in whole or in part by any act or omission of Landlord, its contractors, agents, or employees. Tenant shall have no liability for any presence of any hazardous substances existing at or affecting said locations prior to the Occupancy Commencement Date of this Lease, nor be responsible for any presence of any hazardous substances that may, at any time, percolate into, onto, or under said location from a source located upon adjacent property not caused by Tenant. Landlord shall indemnify and hold Tenant harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for the settlement of claims, attorneys' fees, and consultant and expert fees) arising from the presence, disposal, or release of any hazardous substances at said locations existing at or affect said locations as of the Occupancy Commencement Date of this Lease or which may occur following the Occupancy Commencement Date of this Lease as a result of any act or omission of Landlord, its contractors agents, or employees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision.

## **Section 16: Environmental Matters**

- 16.1. Obligations of Landlord and Tenant:** To the extent legally applicable, the parties shall comply with all federal, state, and local environmental laws and regulations in the conduct of the use of said locations, including, but not limited to, Wis. Stat. § 85.17 and Wis. Admin. Code ch. Trans 277. Except as required in the ordinary course of its business, the parties shall not permit or conduct either the generation, treatment, storage, or disposal of any hazardous substance on said locations, and to the extent permitted by law, will perform all remedial actions reasonably necessary as a result of the presence of any hazardous substances on, at, or near said locations, which such hazardous substances are located on or beneath the surface of said locations, as a result of an act or omission of the parties made pursuant to this Agreement. Any required remediation shall be paid for by WisDOT and County according to the ratio provided in WisDOT's Highway Maintenance Manual Section 02-20-35. The County will maintain the reports required under Wis. Admin. Code § Trans 277.05. The foregoing covenants shall survive the expiration of the initial term and any renewal term.
- 16.2. Notice of Claim:** Landlord and Tenant agree to provide the other party with any notice of an environmental claim made by third parties or any governmental entity related to said locations immediately after receipt of any such claim.

## **Section 17: Miscellaneous Provisions**

- 17.1. **Governmental Regulations:** Landlord and Tenant shall operate the facility in full compliance with the requirements of all governing federal, state, and local authorities.
- 17.2. **Successors and Assigns:** This Lease may not be assigned without the written consent of the parties. All of the covenants, agreements, terms, and conditions contained in this Lease shall inure to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, and permitted assigns.
- 17.3. **Notices:** All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing and delivered in person or sent by either United States Certified Mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight delivery service, at the address listed in Sections 2.2 or 2.3, above, as the case may be, or such other address as one party shall have designated in writing to the other party hereto.
- 17.4. **Binding Effect.** The covenants, agreements, and obligations herein contained, except as otherwise specifically provided herein, shall extend to, bind, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns (but in the case of assigns, only to the extent that assignment is permitted herein). This Lease shall remain in full force and effect regardless of whether \_\_\_\_\_ County provides maintenance to WisDOT's state trunk and interstate highway system.
- 17.5. **Force Majeure:** If either party is delayed from the performance of any act required herein by reason of labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, riots, insurrection, war, or like reasons not the fault of the party delayed, then the period of performance of the act shall be extended for a period equivalent to the period of delay.
- 17.6. **Surrender of Premises:** At the expiration of the initial term (if this Lease is not automatically renewed) or renewal term (if this Lease is automatically renewed) or if this Lease is terminated, Tenant shall surrender the keys to Landlord and shall inform Landlord of all combinations on locks, safes, and vaults on said locations.
- 17.7. **Governing Law:** The laws of the State of Wisconsin shall govern the validity, performance, and enforcement of this Lease, with application of conflict of law principles.
- 17.8. **Invalidity of a Single Provision:** The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision.
- 17.9. **Languages Inclusive:** Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.
- 17.10. **Captions:** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or paragraphs of this Lease, nor in any way affect this Lease.
- 17.11. **Quiet Enjoyment and Accessibility:** Landlord hereby covenants and agrees that if Tenant shall not then be in default beyond any period for the cure thereof, Tenant shall, at all times during the term of this Lease, have peaceable and quiet enjoyment and possession of said locations without any manner of molestation or hindrance from Landlord or any other person, firm, or corporation. Tenant shall have unimpeded access to said locations throughout the initial term and, if exercised, any renewal term to realize the permitted use described in Section 6, above.
- 17.12. **Recordable Lease:** Landlord agrees that upon Tenant's request, Landlord will promptly cause a memorandum or short form lease in accordance with the terms hereof to be recorded with the Office of the Register of Deeds for Sauk County. Tenant shall submit a form of such memorandum or short form lease in recordable form to Landlord for its approval, with such approval not to be unreasonably withheld.
- 17.13. **Survival:** All representations, warranties, and other agreements described in this Lease shall survive the expiration or termination of this Lease.
- 17.14. **Right of Entry:** Landlord shall have unimpeded access to said locations throughout the initial term and, if applicable, any renewal term to realize the permitted use described in Section 6, above. Only properly authorized County personnel or contractors shall store, handle, or remove sand or salt on or from said locations.
- 17.15. **Entire Agreement:** This Lease and the exhibits referenced in it contain the entire agreement between the parties and shall not be modified in any manner except by written amendment attached to this Lease and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

Landlord:

[\_\_\_\_\_]County Commissioner

By: [X]

Dated this \_\_\_\_ day of [X], 201[X]

Tenant:

Wisconsin Department of Transportation  
Regional Operations Manager

By: [X]

Dated this \_\_\_\_ day of [X], 201[X]

Wisconsin Department of Transportation  
Statewide Maintenance Engineer

By: [X]

Dated this \_\_\_\_ day of [X], 201[X]

SAMPLE

Sample 4

**LEASE AGREEMENT**

Between  
[XXX] County, Wisconsin (Lessor)  
And  
Wisconsin Department of Transportation (Lessee)  
Regarding  
Road Salt Storage Facility

**Section 1: Lease Agreement**

This lease agreement (“Lease”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016 by and between [XXX]County (“County”) and the Wisconsin Department of Transportation (“WisDOT”) each a party, together the parties, pursuant to WisDOT’s statutory authority under Wis. Stat. §§ 66.0301 and 84.07 and other laws. WisDOT requires the Leased Premises, as described in Section 2.4, below, to construct and operate a road salt storage facility using County or other forces. The Leased Premises represent the best location for such a facility based on WisDOT’s operational needs. WisDOT owns no comparable real estate suitable for this purpose. In consideration of the mutual promises and covenants contained in this Lease, County and WisDOT agree:

**Section 2: Basic Lease Provisions**

**2.9 Definitions:** As used in this Lease unless the context requires another interpretation:

- 2.9.1** “Access” or “Accessibility” means the ability to ingress, egress, and otherwise freely use the Capacity Allocation.
- 2.9.2** “Capacity Allocation” means the agreed upon portion available for a party’s use, measured in percentage or tonnage, of the Facility’s functional capacity designated for the storage of Salt.
  - 2.9.2.1** WisDOT Capacity Allocation = 90% (18,000 TONs)
  - 2.9.2.2** County Capacity Allocation = 10% (2,000 TONs)
- 2.9.3** “Facility” means the 20,000 TON Salt storage building located at [Address], along with any conveyors and other fixed equipment used to load or unload Salt into storage areas.
- 2.9.4** “Financed” means the provision of funds to develop design and plans, purchase land or materials, pay for construction, or any combination thereof by one party or jointly among the parties. The term “Financed” does not include payments by WisDOT to County for Salt storage under the routine maintenance authority for expenditure agreement or the sodium chloride reimbursement policy 02-20-35 of the State Highway Maintenance Manual.
- 2.9.5** “Hazardous substances” means any substance that is toxic, ignitable, reactive, or corrosive, and whose storage, handling, disposal, or transport is regulated by federal,

state, or local statute, rule, regulation, or ordinance and shall include any material or substance that is defined as “hazardous waste,” “extremely hazardous waste,” or “hazardous substance” pursuant to federal, state, or local statute, rule, regulation, or ordinance, including, but not limited to, asbestos, polychlorinated biphenyls (“PCBs”) and petroleum products.

**2.9.6** “Ownership” means the land or building or equipment or any combination thereof titled or otherwise documented in the name of the County, State, or any agency thereof.

**2.9.7** “Pit Scale Equipment” means the static pit scale and all related equipment located on the Leased Premises, as shown in **Exhibit B** which is attached hereto and incorporated herein. The Pit Scale Equipment is further identified as WisDOT Equipment ID No. [XXX].

**2.9.8** “Salt” means any sodium chloride, calcium chloride, sand, chloride/sand mixture, or any other de-icing material or mixture deemed appropriate and useful for winter highway maintenance operations. WisDOT, upon consultation with County, may designate the specific de-icing materials that may be stored in the Facility.

**2.9.9** “Substantive Refurbishment” means major repairs and maintenance. It is further defined as repairs costing in excess of the Facility’s remaining residual value or typically 15% of the original purchase price of such Facility.

**2.10 County:** [XXX] County, Wisconsin

[Address]

[Address]

[Address]

**2.11 WisDOT:** Wisconsin Department of Transportation

[Address]

[Address]

[Address]

**2.12 Leased Premises:** “Leased Premises” means the Facility, including Access to the Facility, paved loading and unloading areas around or useful to the Facility, and the area required for the Pit Scale Equipment. The Leased Premises are shown in **Exhibit A** which is attached hereto and incorporated herein.

**2.13 Lease Term:** Forty (40) years (“Initial Term”). Further, the parties shall have the option to renew this Lease beyond the Initial Term as described in Section 4, below (“Renewal Term”).

**2.14 Initial Term Occupancy Commencement Date:** November 1, 2015. County shall provide WisDOT evidence of any appropriate certificate of occupancy and use or other authorizations required by local ordinances or regulations for WisDOT’s occupancy and use of the Leased Premises as a Salt storage facility.

**2.15 Initial Term Occupancy End Date:** November 1, 2055.

**2.16 Rent:** WisDOT shall Finance the Facility, authorize County to occupy 10% of the tonnage of the total capacity of the Facility during the Initial Term and any Renewal Term, and make maintenance payments pursuant to Section 3.3, below. WisDOT shall owe County no additional rent payment in the event County chooses not to occupy County’s total Capacity Allocation of the Facility at any point in the Initial Term and any Renewal Term.



### **Section 3: Construction, Maintenance, Alteration, and Refurbishment**

- 4.4 Construction and Alteration:** WisDOT shall have the right to construct and subsequently alter, with County's advance written consent (not to be unreasonably withheld or delayed), the Facility. The Facility's construction and subsequent alteration, if any, shall be Financed solely by WisDOT. Upon installation, the Facility shall become and remain the County's property. WisDOT expects the Facility to have a projected services life of 50 years. WisDOT shall agree with County annually to reserve County's Capacity Allocation, in accordance with Section 2.8, above. As of the date of this Lease, the Facility has been constructed and accepted by the County.
- 4.5 Customary Maintenance and Repair:** The County shall be responsible for all maintenance and repair identified by WisDOT using the funds the County receives from WisDOT under Section 3.3, below. The County shall perform maintenance and repair on the Facility with reasonable dispatch. If the costs of maintenance and repair are less than the sum of the funds County receives under Section 3.3, below, County may retain the remainder. If the costs of maintenance and repair are more than the sum of the funds County receives under Section 3.3, below, County shall pay for the outstanding balance.
- 4.6 Maintenance Payment:** WisDOT shall pay County a lump sum payment for maintenance of the Leased Premises and the Facility on April 1 of every year during the Initial Term and any Renewal Term. Such payments shall be calculated according to WisDOT's Highway Maintenance Manual Section 02-20-35 (2.0 paragraph 1), as that Section may from time to time be amended. As a matter of law applicable to WisDOT, the payment described in this Subsection 3.3 is subject to the availability of appropriated funds that may be lawfully used for such payment. WisDOT will obligate funds for the Initial Term of this Lease upon execution of this Lease. WisDOT will obligate funds for any Renewal Term of this Lease upon providing the notice required in Section 4, below. These obligations do not constitute the contracting of public debt under Article VIII, Section 4 of the Wisconsin Constitution.
- 4.7 Refurbishment:** If the Facility's service life exceeds the 50 year service life WisDOT originally projected, WisDOT and County may have the option to engage in a Substantive Refurbishment of the Facility as agreed to by WisDOT and the County. The Substantive Refurbishment of the Facility shall be financed by County on terms mutually agreeable to WisDOT and County. Nothing in this Subsection 3.4 limits the provisions contained in Section 4, below.
- 4.8 Relocation:** In the event County elects to discontinue operations at this site, County may terminate this Lease by providing one hundred eighty (180) days written notice to WisDOT. County shall provide WisDOT, at County's expense, equivalent Salt storage capacity at a mutually agreeable location(s) under the same terms and conditions as this Lease.

### **Section 4: Renewal Term**

So long as neither County nor WisDOT is in material default under this Lease or any other agreement between the parties, this Lease shall automatically renew for an additional ten (10) year term as of the expiration of the Initial Term upon the same terms and conditions unless either County or WisDOT gives not less than one hundred and twenty (120) days written notice to the other party prior to the expiration of the Initial Term. Such written notice shall be made in accordance with Subsection 15.3, below.

### **Section 5: Permitted Use**

- 5.1** Subject to any applicable federal, state, and local laws and regulations, the County and WisDOT shall use the Leased Premises for storing Salt in furtherance of highway maintenance operations. The Leased Premises shall be secured by the County and not be open to the public.

## 5.2 Pit Scale Equipment

- 5.2.1 The County shall make lands within the Leased Premises available for the construction, installation, maintenance, operational use, and replacement of the Pit Scale Equipment.
- 5.2.2 WisDOT will Finance the construction of the Pit Scale Equipment and maintain Ownership thereof, and may upon written notice to the County elect to remove or replace the Pit Scale Equipment or install an industry equivalent in its current location at any time during the Term of this Lease.
- 5.2.3 The County will be responsible for performing all maintenance of the Pit Scale Equipment, with costs reimbursed by WisDOT pursuant to Subsections 3.2 and 3.3, above.
- 5.2.4 The Pit Scale Equipment shall be used by all WisDOT and County authorized vehicles that haul Salt to and from the Facility. All vehicles must be tared, ticketed, and recorded so as to maintain an accurate available capacity calculation within the Facility.
- 5.2.5 Use of the Pit Scale Equipment shall follow relevant procedures and guidelines in the WisDOT Highway Maintenance Manual, as it may from time to time be updated. WisDOT may access the Pit Scale Equipment for non-Salt related activities, including but not limited to highway improvement projects and law enforcement needs; provided, however, that the Pit Scale Equipment is not, nor shall be generally treated as, a weigh station and therefore use for non-Salt related activities shall be restricted to occasional, necessary uses only.
- 5.2.6 County may use the Pit Scale Equipment for non-WisDOT purposes, such as for local highway or park projects. County shall be responsible for tracking and invoicing such use separately and may establish a rate for the Pit Scale Equipment for County invoicing purposes. Maintenance reimbursement rates shall account for non-WisDOT use.
- 5.2.7 WisDOT may upon written notice to County elect to remove, replace in kind or with an industry equivalent, the Pit Scale Equipment at its own cost at any time during the Term of this Lease. The terms and conditions of this Subsection 5.2 are applicable to the Pit Scale Equipment and any replacement. If removed, the terms and conditions of this Subsection 5.2, except Subsection 5.2.1, will not apply to this Lease until the Pit Scale Equipment is replaced.

## Section 6: Utilities

County shall pay or cause to be paid all charges for water, sewerage, gas, electricity, waste disposal, heat or other fuel or power or any other utility or serviced delivered to or used in connection with the Leased Premises.

## Section 7: Insurance and Related Liability

- 9.5 **County's Insurance:** County shall obtain and carry at all times during the Initial Term and any Renewal Term of this Lease a policy for bodily injury and property damage liability insurance, to the satisfaction of WisDOT, insuring the Facility at its full replacement value (depreciation considered). All insurance must be procured from insurance companies licensed or approved to do business in the State of Wisconsin. County shall furnish WisDOT with a certificate of insurance establishing that such insurance is in effect before execution of this Agreement and annually and/or demand thereafter.

**9.6 WisDOT's Insurance:** WisDOT is self-insured. WisDOT's Self-Funded Liability and Property Programs protect WisDOT. County employees may not file workers' compensation claims against WisDOT's insurance policy.

**9.7 County's Liability:** If the Facility (or any part thereof) is damaged or destroyed, County will be held fully liable and financially responsible, in accordance with Section 8, below.

**9.8 WisDOT's Liability:** Wisconsin Stat. § 895.46 provides that WisDOT pays for certain negligence claims against WisDOT's employees and agents. WisDOT as the contracting entity maintains sovereign immunity. WisDOT cannot waive sovereign immunity, indemnify, or waive subrogation or liability in any manner.

## **Section 8: Damage or Destruction**

If the Facility (or any part thereof) is damaged or destroyed by casualty covered by insurance (of County or a third party) or highway maintenance operations County performs negligently, then this Lease shall remain in full force and effect, and County shall fully repair or restore the Facility (or any part thereof) with reasonable dispatch. If the Facility (or any part thereof) is damaged or destroyed by neither casualty covered by insurance (of County or any third party) nor highway maintenance operations County performs negligently, WisDOT may terminate and cancel this Lease by giving written notice to County within sixty (60) days after the occurrence of such damage or destruction or engage in a Substantive Refurbishment of the Facility as provided in Subsection 3.4, above.

## **Section 9: Taxes**

**11.3 WisDOT Personal Property Taxes:** WisDOT is not subject to personal property taxes as provided in Wis. Stat. § 70.11(1). WisDOT shall respond to any claims that it has failed to pay, before delinquency, all taxes, assessments, license fees, and other charges ("taxes") that are mistakenly levied and assessed against WisDOT's personal property installed or located on the Leased Premises or in the Facility and that are alleged to become payable during the term of this Lease.

**11.4 WisDOT Real Property Taxes:** WisDOT is not subject to real property taxes as provided in Wis. Stat. § 70.11(1).

**11.5 County Taxes:** County is responsible for and shall pay all taxes levied against it. Unpaid County taxes shall be offset against any amount owed by WisDOT to County under this Lease.

## **Section 10: Default**

**12.5 WisDOT's Default:** All of the following shall be considered events of WisDOT's default:

**12.1.1.** WisDOT shall fail to perform any of the covenants or conditions herein contained on the part of WisDOT, and such default shall continue for thirty (30) days after County gives WisDOT written notice thereof (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such default, if such default cannot be cured within such thirty (30) day period, and provided WisDOT commences the process of curing such default within said thirty (30) day period and continuously and diligently pursues such cure to completion); or

**12.1.2.** If this Lease shall, by act of WisDOT or by operation of law or otherwise, pass to any party other than WisDOT without consent of County.

**12.6 County's Remedies:** If WisDOT defaults, as set forth in Subsection 10.1, above, and fails to cure such default pursuant to the applicable cure periods stated therein, County shall have and may exercise the following rights:

**12.2.1.** County may elect, but shall not be obligated, to make any payment required of WisDOT herein or comply with any agreement, term, or condition required hereby to be performed by WisDOT, and County shall have the right to correct or remedy any such default.

**12.2.2.** County may enter said locations immediately and remove the WisDOT's property and store said property in a public warehouse or at a place selected by County until WisDOT cures its default.

**12.2.3.** On termination, but only to the extent permitted by law applicable to WisDOT, County may seek remedies from WisDOT relating to the breach.

**12.7 County's Default and WisDOT's Remedies:** If County shall fail to perform any of the covenants or conditions required to be performed by it under this Lease, and such default shall continue for thirty (30) days after WisDOT gives County written notice thereof (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such default, if such default cannot be cured within such thirty (30) day period, and provided County commences the process of curing such default within said thirty (30) day period and continuously and diligently pursues such cure to completion), WisDOT may, but shall not be obligated to, remedy such default. Upon WisDOT's demand, County shall pay WisDOT all reasonable sums expended or obligations incurred by WisDOT in connection therewith. Notwithstanding the foregoing, WisDOT shall have and may exercise any and all rights provided in law or equity.

**12.8 Waiver of Failure to Declare Default:** A waiver by either party of a breach or default by the other under the terms and conditions of this Lease shall not be construed to be a waiver of any subsequent breach or default, nor of any other term or condition of this Lease, and the failure of a party to assert any breach or to declare a default by a party shall not be construed to constitute a waiver thereof so long as such breach or default continues un-remedied.

### **Section 11: Duty to Keep Leased Premises Free of Liens**

Neither party shall permit any mechanics', laborers', materialmans', or other liens to stand against the Leased Premises or Facility, or the equipment for any labor or material furnished to the Leased Premises or Facility, in connection with work of any character performed or claimed to have been performed on the Leased Premises or Facility, whether such work performed or materials furnished prior to or subsequent to the commencement of this Lease. WisDOT and County shall properly and fully pay and discharge any and all claims on which a lien against the Leased Premises or Facility could be based.

### **Section 12: Termination**

This Lease shall terminate upon the earlier of the following:

**14.2.** Expiration of the Initial Term (i.e., forty (40) total years) if either County or WisDOT provides the written notice required in Section 4 indicating it does not wish to automatically renew this Lease;

- 14.3. Expiration of the Renewal Term if this Lease is automatically renewed as generally provided in Section 4 (i.e., fifty (50) total years);
- 14.4. Upon WisDOT's election, after having given County sixty (60) days prior written notice; or
- 14.5. As otherwise provided in this Lease.

### Section 13: Indemnity

- 15.3. **Indemnification of County:** Wisconsin law prohibits WisDOT from entering into any indemnification agreements whereby WisDOT would indemnify County (or any of its directors, shareholders, officers, members, managers, employees, agents, or representatives).
- 15.4. **Indemnification of WisDOT:** County shall indemnify, defend, and hold WisDOT (and its directors, shareholders, officers, employees, agents, and representatives) harmless from and against all claims, actions, damages, liability, and expenses (including reasonable attorneys fees and actual costs) arising from, out of, or in connection with the loss of life, personal and bodily injury, and damage to property arising from any accident or occurrence upon said locations, caused in whole or in part by any act or omission of County, its contractors, agents, or employees. WisDOT shall have no liability for any presence of any hazardous substances existing at or affecting said locations prior to the Occupancy Commencement Date of this Lease, nor be responsible for any presence of any hazardous substances that may, at any time, percolate into, onto, or under said location from a source located upon adjacent property not caused directly by WisDOT act. County shall indemnify and hold WisDOT harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for the settlement of claims, attorneys fees, and consultant and expert fees) arising from the presence, disposal, or release of any hazardous substances at said locations existing at or affect said locations as of the Occupancy Commencement Date of this Lease or which may occur following the Occupancy Commencement Date of this Lease as a result of any act or omission of County, its contractors agents, or employees. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. This provision shall survive termination of this Lease.

### Section 14: Environmental Matters

- 16.3. **Obligations of County and WisDOT:** To the extent legally applicable, the parties shall comply with all federal, state, and local environmental laws and regulations in the conduct of the use of the Leased Premises and Facility, including but not limited to, Wis. Stat. § 85.17 and Wis. Admin. Code ch. Trans 277. Except as required in the ordinary course of its business, the parties shall not permit or conduct either the generation, treatment, storage, or disposal of any hazardous substance on the Leased Premises or Facility and, to the extent permitted by law, will perform all remedial actions reasonably necessary as a result of its own acts which result in the presence of any hazardous substances on, at, or near, the Leased Premises or Facility, as a result of an act or omission of the party. The County will maintain all reports required under Wis. Admin. Code § Trans 277.05. The foregoing covenants shall survive termination of this Lease.
- 16.4. **Notice of Claim:** County and WisDOT agree to provide the other party with any notice of an environmental claim made by third parties or any governmental entity related to the Leased Premises or Facility immediately after of receipt of any such claim.

### Section 15: Miscellaneous Provisions

- 17.16. Governmental Regulations:** County and WisDOT shall operate the Facility in full compliance with the applicable requirements of all governing federal, state, and local authorities.
- 17.17. Successors and Assigns:** This Lease may not be assigned without the written consent of the parties unless by an act of law outside the parties control. All of the covenants, agreements, terms, and conditions contained in this Lease shall inure to and be binding upon County and WisDOT and their respective heirs, executors, administrators, successors, and permitted assigns.
- 17.18. Notices:** All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing and delivered in person or sent by either United States Certified Mail, return receipt requested, postage prepaid, or by Federal Express or other nationally recognized overnight delivery service, at the address listed in Subsections 2.2 or 2.3, above, as the case may be, or such other address as one party shall have designated in writing to the other party hereto.
- 17.19. Binding Effect.** The covenants, agreements, and obligations herein contained, except as otherwise specifically herein, shall extend to, bind, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns (but in the case of assigns, only to the extent that assignment is permitted herein). This Lease shall remain in full force and effect regardless of whether County provides maintenance to WisDOT's state trunk and interstate highway system.
- 17.20. Force Majeure:** Neither party shall be in default of any provisions for failure to perform where such failure is due solely to civil insurrections or disorders, emergency orders of civil authorities, acts of God or any other cause or causes beyond the reasonable control of either party but not including strikes of either party's workforce ("Force Majeure"). The parties agree that the provision of storage space under this Lease is related to the safe operation of WisDOT's highway system and that any interruption in the Lease could be detrimental to the same. In the event of a Force Majeure event, County will make all reasonable efforts to remedy the same including provision of salt or space from another source during the pendency of the Force Majeure event.
- 17.21. Surrender of Leased Premises:** At the expiration of the Initial Term (if this Lease is not automatically renewed) or Renewal Term (if this Lease is automatically renewed) or if this Lease is terminated, WisDOT shall remove all property surrender the keys to the Facility to County and shall inform County of all combinations on locks, safes, and vaults on said locations.
- 17.22. Governing Law:** The laws of the State of Wisconsin shall govern the validity, performance, and enforcement of this Lease, with application of conflict of law principles.
- 17.23. Invalidity of a Single Provision:** The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. Upon determination of invalidity of any provision, the parties agree to negotiate a replacement provision for the same.
- 17.24. Captions:** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or paragraphs of this Lease, nor in any way affect this Lease.
- 17.25. Quiet Enjoyment and Accessibility:** County hereby covenants and agrees that if WisDOT shall not then be in default beyond any period for the cure thereof, WisDOT shall, at all times during the term of this Lease, have peaceable and quiet enjoyment and possession of said locations without any manner of molestation or hindrance from County or any other person,

firm, or corporation. WisDOT shall have unimpeded Access to the Leased Premises and Facility throughout the Initial Term and, if exercised, any Renewal Term of the Lease.

**17.26. Recordable Lease:** County agrees that upon WisDOT's request, County will promptly cause a memorandum or short form lease in accordance with the terms hereof to be recorded with the Office of the Register of Deeds for Milwaukee County. WisDOT shall submit a form of such memorandum or short form lease in recordable form to County for its approval, with such approval not to be unreasonably withheld. Nothing in this paragraph prevents WisDOT from recording the Lease.

**17.27. Survival:** All representations, warranties, and other agreements described in this Lease shall survive the expiration or termination of this Lease.

**17.28. Right of Entry:** County shall have unimpeded Access to the Leased Premises and Facility throughout the Initial Term and, if applicable, any Renewal Term in order to effectuate this Lease. Only properly authorized County personnel or contractors shall store, handle, or remove sand or salt on or from the Leased Premises or Facility.

**17.29. Entire Agreement:** This Lease and the exhibits referenced in it contain the entire agreement between the parties and shall not be modified in any manner except by written amendment attached to this Lease and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

**For [XXX] County**

By:

\_\_\_\_\_  
XX  
County Executive

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
XX  
Comptroller

\_\_\_\_\_  
Date

Approved for execution:

\_\_\_\_\_  
XX  
Corporation Counsel

\_\_\_\_\_  
Date

*Signatures continue on the following page.*

**For the State of Wisconsin Department of Transportation**

By:

\_\_\_\_\_  
[Name]  
[XXX] Region Operations Manager

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
[Name]  
Statewide Maintenance Engineer

\_\_\_\_\_  
Date

SAMPLE



Sample 5

**ROAD SALT STORAGE MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
WISCONSIN DEPARTMENT OF TRANSPORTATION (WisDOT)  
AND  
COUNTY OF [XXX]**

The following list of salt sheds are covered under this MOU:

Shed Owner: County [C]; State [S]

| Salt Shed Number | WisDOT Storage | Other's Storage | Functional Capacity | WisDOT Funding | Location | City | Owner | Written Lease Agreement                                  |
|------------------|----------------|-----------------|---------------------|----------------|----------|------|-------|--|
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
|                  |                |                 |                     |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Total            | 0              | 0               | 0                   |                |          |      |       | Yes <input type="checkbox"/> No <input type="checkbox"/> |

**PURPOSE:**

The long standing county partnership with the WisDOT for storing salt for winter maintenance on WisDOT roads is of mutual benefit. Storage is provided in facilities financed by WisDOT that are on county owned sites along with storage facilities owned and financed by the county for which the county receives payment from WisDOT.

Efficient operational use and effective investment in road salt storage facilities require a clear understanding between the county (County Highway Department, or its equivalent) and WisDOT regarding ownership, financing, capacity allocation, and accessibility associated with each facility. It is the purpose of this Memorandum to foster that understanding.

**UNDERSTANDING:**

**County Owned Sheds:**

The aggregate indoor storage capacity in the county that is allocated for storage of WisDOT salt shall, at a minimum, equal the salt storage capacity financed by the WisDOT plus the percentage of capacity financed by the WisDOT jointly with the county.

The county may allocate additional storage capacity for WisDOT salt. Such additional capacity shall be allocated in one-year increments. The allocation shall automatically renew each May 1

unless either party issues notice of cancellation on or before April 1. Cancellation shall be effective April 30 of the calendar year following issuance of the cancellation notice.

Compensation to the county for the maintenance and depreciation of facilities used to store WisDOT salt shall be made according to the terms of the Sodium Chloride Storage Policy 02-20-35 of the State Highway Maintenance Manual.

WisDOT shall have year round access to its storage capacity. In the event WisDOT elects not to use a portion of its capacity for any portion of the year, that capacity may be used by the county upon agreement between the county and WisDOT's Highway Maintenance Supervisor.

**Additional Provisions for WisDOT Owned Sheds:**

This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind any party unless in writing and signed by the parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The (county), by the signature below of their authorized representatives, hereby acknowledges that they have read this agreement, understand it, and agree to be bound by its terms and conditions.

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

The county shall use the salt storage facility for the purpose of storing sand and/or a sand/salt mixture as designated by WisDOT, at its sole discretion.

The county shall use the designated areas of the Maintenance Lot only for the purpose of storing sand/salt and for parking and storage of vehicles and equipment directly associated with such use. The (county) shall use only those areas of the Maintenance Lot designated by WisDOT. The county shall not mingle its salt and sand material with that of WisDOT.

Only properly authorized county personnel or contractors working for WisDOT shall store, handle, or remove sand or salt on or from the Maintenance Lot.

The Maintenance Lot shall not be open to the public.

The county shall repair any damage to the Maintenance Lot caused by the county or contractors working for the county, normal wear and tear excluded.

**Other Provisions:**

**Compliance.** The parties agree to operate the salt facility on the Maintenance Lot in full compliance with all Federal, State, and municipal environmental laws and regulations now in existence, or as may be promulgated in the future.

**Liability for Salt Contamination.** In the event of a third-party claim for salt contamination arising from conditions on the Maintenance Lot occurring after the effective date of this Agreement, the parties agree to apportion liability for such claim in accordance with their respective maintenance activities permitted herein.

**Claims.** The county agrees to be responsible for any claims or damages for resulting from the action or inaction of the county in connection with work or activities performed under this MOU.

The county employees may not file workers compensation claims against WisDOT's insurance policy.

**Insurance:**

The county agrees to maintain bodily injury and property damage liability insurance against any claim arising from the county activities on the property in an amount of not less than \$400,000.00. All insurance must be procured from insurance companies licensed or approved to do business in the State of Wisconsin. The county will furnish WisDOT with a certificate of insurance establishing that such insurance is in force before the 2013 winter season.

WisDOT shall own and insure the building and property. WisDOT's insurance policy will not cover any of the county contents or personal property. Because the building will be included on WisDOT's asset list and insurance policy, a claim must be filed with WisDOT's insurance provider immediately after any damage to the building or WisDOT owned or rented equipment has been caused. WisDOT's (SW region), Madison office shall notify WisDOT's Risk Management Office of any and all damage to the building or equipment. And damage to the building or WisDOT owned or rented equipment that is caused by negligence of the (county) shall be covered by the county insurance policy and shall not be processed through WisDOT's Risk Management office.

**DEFINITIONS:**

"Ownership" means the land or building or equipment or any combination thereof titled or otherwise documented in the name of the county, state, or any agency thereof.

"Financed," means the provision of funds to develop designs and plans, or purchase land or materials, or pay for construction, or any combination thereof by one party or jointly among the parties. The term financed does not include payments by WisDOT to the county for salt storage under the Routine Maintenance Authority for Expenditure Agreement or the Sodium Chloride Storage Reimbursement Section 02-20-35 of the State Highway Maintenance Manual. ·

"Capacity allocation, or "allocated capacity" means the agreed upon portion, measured in tons, of the facility's functional capacity designated for the storage of salt for use on the state trunk and interstate highway systems and the capacity allocated for the storage of salt for use on county trunk or other roadways.

"Accessibility" means the ability to freely use the allocated capacity for storage of WisDOT salt.

**SIGNATURES:**

For the County of [XXX]

For the Wisconsin Dept. of Transportation

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

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

*(County Representative)*

*(Region Hwy Operations Chief)*

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_