



**LAND CONSERVATION COMMITTEE  
WEDNESDAY, APRIL 6, 2011, 7:15 p.m.  
LAND CONSERVATION DEPARTMENT - CONFERENCE ROOM  
USDA SERVICE CENTER  
440 N US HWY 14  
JANESVILLE WI**

1. Call Meeting to Order.
2. Approval of Agenda.
3. Approval of Minutes – March 2, 2011.
4. Citizen Participation, Communications, and Announcements.
5. Bills/Transfers.
6. Discussion - Rock Prairie Dairy, LLC.
7. Resolution: Amending 2011 Land Conservation Department Budget Gypsy Moth Suppression Program.
8. Approval of the Rock County Gypsy Moth Suppression Grant Agreement 2011.
9. Farmland Preservation Program – Notice of Non-Participation for Donald & Agnes Brown and Marlene Voshell.
10. Purchase of Agricultural Conservation Easements:
  - a. Review and Preliminary Approval of Real Estate Appraisal Services Contract.
  - b. Review and Approval of PACE Appraisal Bid/Quote.
  - c. Review and Preliminary Approval of PACE Conveyance Agreement Boilerplate.
  - d. Review and Preliminary Approval of Rock County Agricultural Resources Conservation Easement Boilerplate.
  - e. Review and Preliminary Approval of Rock County Agricultural Resources Conservation Easement - Offer of Purchase Boilerplate.
  - f. Program Update.
11. Adjourn.



| Account Number   | Name                             | Yearly Prcnt<br>Appropriation Spent | YTD<br>Expenditure | Encumb<br>Amount               | Unencumb<br>Balance | Inv/Enc<br>Amount | Total     |
|--|----------------------------------|-------------------------------------|--------------------|--------------------------------|---------------------|-------------------|-----------|
| 6263400000-62119   | OTHER SERVICES                   | 6,000.00                            | 0.0%               | 0.00                           | 0.00                | 6,000.00          |           |
| ENC  | R1101602-PO# 03/08/11 -VN#042874 |                                     |                    | WISCONSIN DEPARTMENT OF NATURA |                     | 13,914.00         |           |
| *** OVERDRAFT *** <del>TRANSFER</del> <b>TRANSFER REQUIRED</b> |                                  |                                     |                    | CLOSING BALANCE                |                     | -7,914.00         | 13,914.00 |
|  | GYPSY MOTH SUPPR                 |                                     | PROG-TOTAL-PO      |                                |                     | 13,914.00         |           |

I HAVE EXAMINED THE PRECEDING BILLS AND ENCUMBRANCES IN THE TOTAL AMOUNT OF \$13,914.00 INCURRED BY GYPSY MOTH SUPPRESSION. CLAIMS COVERING THE ITEMS ARE PROPER AND HAVE BEEN PREVIOUSLY FUNDED. THESE ITEMS ARE TO BE TREATED AS FOLLOWS

- A. BILLS AND ENCUMBRANCES OVER \$10,000 REFERRED TO THE COUNTY BOARD.
- B. BILLS UNDER \$10,000 TO BE PAID.
- C. ENCUMBRANCES UNDER \$10,000 TO BE PAID UPON ACCEPTANCE BY THE DEPARTMENT HEAD.

AGRICULTURE/LAND CONSERVATION COMMITTEE APPROVES THE ABOVE. COM-APPROVAL \_\_\_\_\_ DEPT-HEAD

**APR 06 2011** DATE \_\_\_\_\_ CHAIR

RESOLUTION NO. \_\_\_\_\_

AGENDA NO. \_\_\_\_\_

**RESOLUTION  
ROCK COUNTY BOARD OF SUPERVISORS**

Land Conservation Comm.  
INITIATED BY



Thomas Sweeney  
DRAFTED BY

Land Conservation Comm.  
SUBMITTED BY

March 8, 2011  
DATE DRAFTED

**AMENDING 2011 LAND CONSERVATION DEPARTMENT BUDGET  
GYPSY MOTH SUPPRESSION PROGRAM**

- 1 **WHEREAS**, the Land Conservation Department (LCD) has coordinated the Wisconsin Gypsy Moth  
2 Suppression Program for Rock County since 2006; and,  
3  
4 **WHEREAS**, since the initial program year, the number of acres treated has steadily declined and the  
5 financial estimates for the program year 2011 were based on this trend; and,  
6  
7 **WHEREAS**, the LCD determined through the site inventories that infested areas identified by the  
8 sponsors were eligible for treatment based on the established program guidelines; and,  
9  
10 **WHEREAS**, after the site eligibility determination was completed in late fall 2010, the LCD provided  
11 each treatment block sponsor a cost estimate based on a per acre treatment cost that was provided by the  
12 WDNR Gypsy Moth Suppression Program Manager; and,  
13  
14 **WHEREAS**, the site sponsors accepted the estimates and confirmed the program participation; and,  
15  
16 **WHEREAS**, the LCD budget must be amended to reflect the increases in acreage and costs; and,  
17  
18 **NOW, THEREFORE, BE IT RESOLVED** that the Rock County Board of Supervisors duly assembled  
19 this \_\_\_\_\_ day of \_\_\_\_\_, 2011, amends the Land Conservation Department's budget as  
20 follows:

| <u>A/C DESCRIPTION</u>         | <u>BUDGET AT<br/>01/03/2011</u> | <u>INCREASE<br/>(DECREASE)</u> | <u>AMENDED<br/>BUDGET</u> |
|--------------------------------|---------------------------------|--------------------------------|---------------------------|
| <b><u>Source of Funds:</u></b> |                                 |                                |                           |
| 62-6340-0000-42100             |                                 |                                |                           |
| Federal Aid                    | \$4,500                         | \$2,457                        | \$6,957                   |
| 62-6340-0000-44100             |                                 |                                |                           |
| Fees                           | \$4,032                         | \$5,457                        | \$9,489                   |
| <b><u>Use of Funds:</u></b>    |                                 |                                |                           |
| 62-6340-0000-62119             |                                 |                                |                           |
| Other Contracted Services      | \$6,000                         | \$7,914                        | \$13,914                  |

Respectfully submitted:

**LAND CONSERVATION COMMITTEE**

\_\_\_\_\_  
Richard Bostwick, Chair

\_\_\_\_\_  
Larry Wiedenfeld, Vice Chair

\_\_\_\_\_  
Eva Arnold

\_\_\_\_\_  
Ronald Combs

\_\_\_\_\_  
David Innis

\_\_\_\_\_  
Alan Sweeney

\_\_\_\_\_  
Fred Yoss

\_\_\_\_\_  
James Quade, USDA-FSA

**AMENDING 2011 LAND CONSERVATION DEPARTMENT BUDGET GYPSY MOTH  
SUPPRESSION PROGRAM**

Page 2

FINANCE COMMITTEE ENDORSEMENT

Reviewed and approved on a vote of \_\_\_\_\_.

\_\_\_\_\_  
Mary Mawhinney, Chair

FISCAL NOTE:

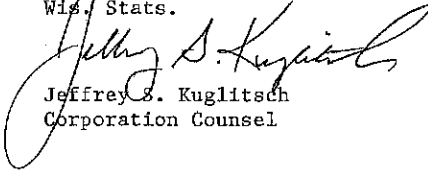
This resolution amends the Gypsy Moth Suppression Program due to an expansion of the program. These costs are offset with Federal Aid and participants fees.



Jeffrey A. Smith  
Finance Director

LEGAL NOTE:

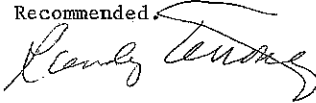
As an amendment to the adopted 2011 County Budget, this Resolution requires a 2/3 vote of the entire membership of the County Board pursuant to sec. 65.90(5)(a), Wis. Stats.



Jeffrey S. Kuglitsch  
Corporation Counsel

ADMINISTRATIVE NOTE:

Recommended.



Randy Terronez  
Acting County Administrator

## EXECUTIVE SUMMARY

The Land Conservation Department has coordinated the Gypsy Moth Suppression Program since 2006. Wisconsin Administrative Code NR 47 requires the county to coordinate and act as the grant recipients for the program if infested areas within the county are to be treated. The program is based on a 50% federal grant and 50% sponsor match. The sponsors submitted a total of five infested areas requesting program eligibility analysis. The LCD determined that all five areas were eligible for treatment. The LCD finalized the treatment estimates and provided them to the sponsors. All areas were accepted and finalized. Billing was then forwarded to sponsors for payment in full. After payment was received, information was forwarded to the DNR Gypsy Moth Suppression Program Manager to be included in the statewide suppression program. Final Gypsy Moth Suppression Grant Agreements were received in the beginning of March. Treatment will be conducted in five (5) blocks consisting of a total 360 acres.

The LCD budget for the Gypsy Moth Suppression Program was underestimated for 2011 and must be amended to accommodate the increase in the number of treatment blocks and corresponding acreage enrolled in the program.

**ROCK COUNTY  
LAND CONSERVATION  
DEPARTMENT**



**REAL ESTATE APPRAISAL  
SERVICES CONTRACT**

441 N. U.S. Highway 14  
Janesville, WI 53546  
Phone: (608) 754-6617 Ex: 3  
Email: landcon@co.rock.wi.us

**GENERAL AGREEMENT**

1. This Contract is made and entered into by and between County of Rock ("County") and \_\_\_\_\_, an appraiser certified in the State of Wisconsin ("Appraiser").
2. In consideration of the mutual covenants and agreements herein set forth and immediately upon signature of this Contract by the County and Appraiser ("execution"), the Appraiser shall appraise the fair market value of an Agricultural Resources Conservation Easement ("Easement") on the following legally described parcel of land ("Property"):

[Legal Description of Property]

The Property is owned in fee simple by the following individual(s) ("Property Owner"):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. This Contract, together with the specifications in the SCOPE OF WORK AND COST PROPOSAL REQUEST - \_\_\_\_\_ PROPERTY, incorporated as Exhibit A herein, and the Appraiser's COST PROPOSAL incorporated as Exhibit B herein, shall constitute the entire Contract and previous communications or contracts pertaining to this Contract are hereby superseded.

**DELIVERABLES**

4. The Appraiser shall provide a \_\_\_\_\_ narrative style appraisal (Appraisal Report), appraising the fair market value of the Easement on the Property. The Appraisal Report shall be performed, prepared, and submitted in accordance with the SCOPE OF WORK AND COST PROPOSAL REQUEST - \_\_\_\_\_ PROPERTY, incorporated as Exhibit A herein, and the Uniform Standards of Professional Appraisal Practice ("Guidelines"), incorporated as Exhibit C herein. Four (4) copies of the Appraisal Report shall be submitted to the County.

**DELIVERY PROCESS**

5. The Appraiser shall personally inspect the Property, conduct an independent search for sales and inspect each sale used in the Appraisal Report. The Appraiser shall employ all appropriate approaches to value. The Property Owner, or his/her designated representative, shall be contacted and given the opportunity to accompany the Appraiser during an inspection of the Property.

6. The Appraiser agrees to complete the appraisal and submit the Appraisal Report (4) to the County on or before \_\_\_\_\_, 2011, time being of the essence. If the Appraisal Report is not delivered within ten (10) calendar days from the date specified above, the County reserves the right to cancel this Contract, in which event the County shall not be liable for payment for any Appraisal Report submitted after the aforementioned date.

### APPRAISAL REVIEW

7. The Appraisal Report shall be reviewed by an appraiser differing than the Appraiser, and selected by the County or another Easement acquisition funding source, to determine if the report is acceptable and meets the terms and conditions of this Contract. This review shall be completed within forty-five (45) calendar days of receipt of the Appraisal Report by the County. The County may within a reasonable time period after receipt of the Appraisal Report require correction of errors and oversights, or request that additional information or documentation be submitted by the Appraiser to further support the Appraisal, all without cost to the County. The Appraiser agrees to fully answer any such request within ten (10) calendar days from the date of such request.

### PAYMENT

8. The County shall pay the Appraiser no more than \_\_\_\_\_ dollars (\$), in accordance with the Appraiser's COST PROPOSAL, incorporated as Exhibit B herein, as compensation for services rendered, to include an Appraisal Report acceptable to the County and in accordance with the SCOPE OF WORK AND COST PROPOSAL REQUEST - \_\_\_\_\_ PROPERTY, incorporated as Exhibit A herein. The Appraiser shall not be entitled to any compensation until the Appraisal Report has been accepted by the County as being in compliance with the terms and conditions of this Contract and reviewed in accordance with Paragraph 7.
9. The Appraiser and County certify that no promise of or payment of any money or any form of consideration has been offered to or given to any County employee for the purpose of procuring this Contract. The Appraiser further certifies that the Appraiser has not participated in any collusion or otherwise taken any action in restraint of free competition in connection with this Contract.

### CONTRACT TRANSFER/ASSIGNMENT, AMENDMENT AND CANCELLATION

10. The Appraiser shall not transfer, assign, or sub-contract this Contract without the prior written approval of the County.
11. Any contractual revisions including cost adjustments and time extensions must be made by a written amendment to this Contract or other written documentation, signed by both parties at least thirty (30) calendar days prior to the ending date of this Contract, which shall be the date payment is delivered to the Appraiser.

No fees or charges other than those identified in Paragraph 7 shall be allowed except by written consent of the County. By written notice, the County may request changes in the Appraisal or in the scope or character of the work to be performed and, for minor additions, will pay the Appraiser at an agreed rate. Where the County determines that the changes involved are major, the County may take either of the following courses of action:

- (1) Cancel this Contract as provided in Paragraph 12 or;
  - (2) Request renegotiation of this Contract, by written notice, to make provision for the necessary changes
12. The County reserves the right to cancel this Contract by written notice to the Appraiser in the event the County determines that the Appraisal becomes unnecessary, or if the County determines that the Appraiser is not complying with the terms and conditions of this Contract, or if the progress or quality of work is unsatisfactory to the County, or for any reason which adversely reflects upon the credibility of the Appraiser or the integrity of the County. The County may pay for those services rendered to the date notice is received, except no payment shall be made where



the cancellation is the result of unethical practices or violation of the terms of this Contract by the Appraiser. All materials, information and data pertaining to this Appraisal in the possession of the Appraiser at the date of cancellation is the property of the County and shall be forwarded promptly upon request.

### **APPRAISER WARRANTIES**

13. The Appraiser warrants that he/she has no direct or indirect, present or future personal interest in the Property covered by this Contract and shall not benefit from any conveyance of the Property appraised.
14. The Appraiser understands and agrees that his/her independent estimate of value is sought. The County may authorize Appraisers to share specific appraisal data on appraisal assignments. The Appraiser agrees not to discuss or convey information used in connection with this Appraisal to any person or entity except the Property Owner when necessary to gain entry for an inspection. This Appraisal is strictly confidential, with the exception that the Appraiser agrees that until three (3) years after final payment under this Contract, any duly authorized representative of the County shall have access to and the right to examine any relevant books, documents, papers and records of the Appraiser involving this Contract.
15. The Appraiser warrants that he/she has not employed or retained any company or person other than an employee working solely for the Appraiser, to solicit or secure this Contract and that he/she has not paid or agreed to pay any company or persons, other than an employee working solely for the Appraiser, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the making of this Contract. For breach or violation of this warranty, the County shall have the right to immediately cancel this Contract without liability.
16. The Appraiser shall provide full worker's compensation insurance for all its employees; and file a certificate of insurance indicating coverage with the County prior to commencing work under this Contract.
17. In connection with the performance of work under this Contract, the Appraiser agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Sec. 51.01(5) Wis. Stats., sexual orientation, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Appraiser further agrees to take affirmative action to ensure equal employment opportunities. The Appraiser agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

### **GENERAL PROVISIONS**

18. The Appraiser agrees to indemnify and save the County, its officers, agents and employees harmless against and from any and all claims, causes of action, damages, accidents, injuries, costs, expenses, demands, suits and liability arising from any action in connection with this Contract, or from any breach or default by the Appraiser with respect to the performance of the Contract, or from any negligence on the part of the Appraiser, its agents, representatives, employees, and contractors.
19. The Appraiser is an independent contractor and not an employee of the County. The County agrees that the Appraiser shall have sole control of the method, hours worked, and time and manner of any performance under this Contract other than as specifically provided herein. The County takes no responsibility for supervision or direction of the performance of the Contract to be performed by the Appraiser, or the Appraiser's employees or agents. The County further agrees that it will exercise no control over the selection and dismissal of the Appraiser's employees or agents.

20. The following individual(s) shall serve as the County contact for this Contract, as follows.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Appraiser may contact the aforementioned individual for any additional information necessary to deliver the services identified in this Contract.

The Appraiser shall serve as their contact for this Contract, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Real Estate Appraisal Services Contract as of latest date on which this Agreement is signed by the parties as set forth below.

| APPRAISER           | COUNTY OF ROCK      |
|---------------------|---------------------|
| Signature: _____    | Signature: _____    |
| Printed Name: _____ | Printed Name: _____ |
| Title: _____        | Title: _____        |
| Date: _____         | Date: _____         |



Rock County Land Conservation Department
441 N. U.S. Highway 14
Janesville, WI 53546
(608) 754-6617 Ex: 115

AGRICULTURAL RESOURCES
CONSERVATION EASEMENT

THIS GRANT OF AN AGRICULTURAL RESOURCES
CONSERVATION EASEMENT is made and entered into this
day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name of
landowners) \_\_\_\_\_, (husband and wife/an individual)
(hereinafter referred to as "GRANTOR"), whose address is
\_\_\_\_\_, Rock County (a political subdivision of the
State of Wisconsin as defined in Sec. 93.73 (1m) (f), Wis. Stats.),
whose address is \_\_\_\_\_ (hereinafter referred to as
"GRANTEE"), and the United States of America, acting by and
through the United States Department of Agriculture ("USDA"),
Natural Resources Conservation Service ("NRCS") (hereinafter
collectively referred to as "UNITED STATES" or "THIRD-PARTY
ENFORCER") on behalf of the Commodity Credit Corporation as its
interest appears herein. The GRANTEE, GRANTOR, and THIRD-
PARTY ENFORCER are hereinafter referred to as the "PARTIES".

20-2011
This space is reserved for recording data.
Return to:
Rock County Agricultural Resources Conservation Easement
Number:

RECITALS

A. GRANTOR is the owner in fee simple of approximately \_\_\_\_\_ acres of real property located in Section
\_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Town of \_\_\_\_\_, Rock County Tax Parcel
Number(s) \_\_\_\_\_, Rock County, State of Wisconsin, (hereinafter referred to as "EASEMENT
AREA"), with said EASEMENT AREA consisting of an agricultural area and a farmstead area, all more particularly
described and identified in Exhibit A and Exhibit B respectively (If there is any discrepancy between Exhibit A and
Exhibit B, Exhibit A shall control.).

B. The EASEMENT AREA is presently in an agricultural or accessory use, as defined herein, and:

INSERT INFORMATION RELATIVE TO EASEMENT AREA

The agricultural value of the EASEMENT AREA has not been and is not likely to be adversely affected, to any
substantial extent, by the use of the EASEMENT AREA as stipulated and authorized herein.

C. GRANTEE is a political subdivision of the State of Wisconsin and administers a Rock County Purchase of
Agricultural Conservation Easements (PACE) Program, tasked with protecting and preserving productive agricultural
lands in Rock County through acquisition of agricultural conservation easements, to encourage and promote the goals

of a strong agricultural economy and community identity, intergovernmental cooperation, and a regional land use vision throughout the County; and is an organization qualified under Sec. 170 (h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.

- D. GRANTEE is also an organization which is qualified to receive funds from the Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C 3838h and 3838i, which is administered by the Natural Resources Conservation Service ("NRCS"), an agency under the United States Department of Agriculture ("USDA"). The FRPP's purpose is to provide funds to qualifying organizations to acquire interests in land so as to protect prime, unique and other important agricultural soils by preventing the conversion of said soils to non-agricultural uses.
- E. GRANTEE has been designated by the FRPP to receive funds to cover a portion of the cost of acquiring this Agricultural Resources Conservation Easement on the EASEMENT AREA, in accordance with Agreement No. \_\_\_\_\_, between the UNITED STATES, Commodity Credit Corporation and GRANTEE. The UNITED STATES shall have third-party enforcement rights of this Agricultural Resources Conservation Easement.

## I. GRANT, PURPOSE, TERM AND EFFECT OF EASEMENT

- 1.1 Grant of EASEMENT. For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of Wisconsin, in particular Sec. 93.73 and 700.40, Wis. Stats., and in consideration of the payment of \$ \_\_\_\_\_ to GRANTOR, GRANTOR hereby grants and conveys unto GRANTEE, and their successors and assigns forever, an Agricultural Resources Conservation Easement in perpetuity over the EASEMENT AREA, consisting of the following terms and conditions ("EASEMENT"), and hereby grants and conveys unto THIRD-PARTY ENFORCER, third-party enforcement rights of the EASEMENT, subject to the following:

The UNITED STATES is granted third-party enforcement rights of this EASEMENT in order to protect the public investment. The Secretary of the United States Department of Agriculture ("the Secretary") or his or her assigns, on behalf of the UNITED STATES, may exercise this right of enforcement under any authority available under State or Federal law if the GRANTEE, and their successors and assigns, fails to enforce any of the terms of this EASEMENT, as determined in the sole discretion of the Secretary.

- 1.2 Purpose of EASEMENT. It is the purpose of this EASEMENT to assure that the EASEMENT AREA will be retained forever substantially unchanged from its present agricultural and accessory uses, and to prevent any use of the EASEMENT AREA that will significantly impair or interfere with said uses. GRANTOR intends that this EASEMENT will confine the use of the EASEMENT AREA to activities that are consistent with the purpose of this EASEMENT.
- 1.3 Term and Effect of EASEMENT. This EASEMENT runs with all of the EASEMENT AREA in perpetuity, regardless of any changes in land ownership or control. This EASEMENT is binding on all owners, occupiers and users of the EASEMENT AREA as well as those with a mortgage, lien or other interest in the EASEMENT AREA. If the EASEMENT owner grants another party the right to occupy or use the EASEMENT AREA, said owner and the other party are jointly and severally responsible for complying with this EASEMENT. This EASEMENT takes effect when accepted and signed by the PARTIES ("executed"), and recorded with the Rock County Register of Deeds.

## II. DEFINITIONS

- 2.1 Definitions. The following terms shall, for the purpose of this EASEMENT, have the definition stated herein. Any other term contained in this EASEMENT not defined herein but vital to the interpretation of this EASEMENT shall be construed to have a legal definition.

- (1) *“Accessory use”* means any of the following land uses, other than a building, structure, impervious surface or improvement, consistent with the purpose of the EASEMENT:
- (a) An activity or business operation that is an integral part of, or incidental to, an agricultural use of the EASEMENT AREA
  - (b) A business, activity or enterprise, whether or not associated with an agricultural use, if all of the following apply:
    - (i) It is conducted by a person who resides on, and owns or farms, the EASEMENT AREA, or by a member of that person’s immediate family.
    - (ii) It requires no new buildings, structures or impervious surfaces.
    - (iii) It employs no more than four (4) full-time employees annually.
    - (iv) It does not impair or limit current or future agricultural use of the EASEMENT AREA or other protected farmland.
- (2) *“Agricultural area”* means that portion of the EASEMENT AREA that is described as the agricultural area in Exhibit A and identified as such in Exhibit B, regardless of whether said area is in agricultural use (If there is any discrepancy between Exhibit A and Exhibit B, Exhibit A shall control.).
- (3) *“Agricultural use”* means any of the following:
- (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
    - (i) Crop or forage production
    - (ii) Keeping livestock
    - (iii) Beekeeping
    - (iv) Nursery, sod, or Christmas tree production
    - (v) Floriculture
    - (vi) Aquaculture
    - (vii) Fur farming
    - (viii) Forest management
    - (ix) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program
  - (b) Any other use the Wisconsin Department of Agriculture, Trade & Consumer Protection (DATCP) or its successor agency identifies by rule as an agricultural use
- (4) *“Alteration”* means the act of causing the change to or disturbance of a surface.
- (5) *“Environmental law”* means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.
- (6) *“Farmstead area”* means that portion of the EASEMENT AREA that is described as the farmstead area in Exhibit A and identified as such in Exhibit B (If there is any discrepancy between Exhibit A and Exhibit B, Exhibit A shall control).
- (7) *“Hazardous materials”* means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials,

infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

- (8) "*Impervious surface*" means an installed material that prevents rain from falling directly onto the land surface or surface vegetation, or that prevents rain water from percolating directly into the soil. Impervious surface includes roofs, containers, pavement and macadam.
- (9) "*Land division*" means the act or process of dividing an existing land lot into two or more lots for the purpose of ownership transfer or building construction or location.
- (9) "*Livestock*" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- (10) "*Open space or natural resource use*" means a use, other than agricultural or accessory, that includes no buildings or permanent structures, other than limited structures such as fences or government-approved natural resource conservation practices that do not convert the land to other uses.
- (11) "*Pre-existing structure*" means a building or structure that existed on the date of execution of this EASEMENT, as identified in Exhibit C.
- (12) "*Pre-existing use*" means a land use, other than agricultural, accessory, or open space or natural resource, that existed on the date of execution of this EASEMENT, as identified in Exhibit C.
- (13) "*Protected farmland*" means land that is legally protected from non-agricultural development.
- (14) "*Third-party enforcement rights*" means rights provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust that is not a grantee of the easement to enforce any term or condition of said easement.

### III. USE OF EASEMENT AREA

3.1 Land Uses in the Agricultural Area. Land uses in the agricultural area are limited to the following:

- (1) The following pre-existing uses and structures that have no material adverse impact on agricultural use of the EASEMENT AREA.
  - (a) Allowable pre-existing uses and structures, if any, and identified in Exhibit C

These pre-existing uses and structures may be repaired and maintained without approval from GRANTEE. However, these pre-existing uses and structures may not be materially expanded or altered, or be renewed after being discontinued, without the prior written approval of GRANTEE under Sec. 3.8.

- (2) Agricultural uses not requiring the installation of impervious surface or gravel
- (3) Accessory uses not requiring the installation of impervious surface or gravel
- (4) Undeveloped open space and natural resource uses
- (5) Uses for which GRANTEE gives prior written approval under Sec. 3.8
- (6) Fencing

(7) Government-approved natural resource conservation practices

- 3.2 Land Uses in the Farmstead Area. This EASEMENT does not limit land uses in the farmstead area. However, any use within the farmstead area must comply with all applicable regulations, ordinances, and codes.
- 3.3 Land Division. The EASEMENT AREA may not be subject to land division, nor may the farmstead area be detached and sold separately from the agricultural area, for purposes of sale of less than the entire EASEMENT AREA, except with the prior written approval of GRANTEE under Sec. 3.8. GRANTEE may not approve a land division or detachment that is inconsistent with the purpose of this EASEMENT. No portion of this EASEMENT may be used in any manner to increase the density of development of any lands not subject to this EASEMENT.
- 3.4 Conservation Compliance. All land uses on the EASEMENT AREA shall comply with applicable state laws related to soil and water conservation, non-point source pollution and nutrient management, regardless of whether the landowner or land user receives any cost-share payment for compliance. All highly erodible land on the EASEMENT AREA shall be subject to a conservation plan prepared in consultation with the Rock County Land Conservation Department. Timber harvested for sale shall be harvested according to a forest management plan prepared or approved by a qualified forester that maintains the productivity of the forest resource and is consistent with the purpose of this EASEMENT.
- 3.5 Land surface alteration. Except as otherwise authorized under any applicable government-approved natural resource conservation practices, any alteration to the surface of the EASEMENT AREA, including excavation, removal or filling of the land surface, shall be consistent with purpose of this EASEMENT. Permitted alteration under this subsection must be minimal in scope and impact and may not either singly or in aggregate exceed one (1) acre in size. Any alteration shall be repaired to the maximum extent feasible to restore the land's potential for agricultural use.
- 3.6 Actions Requiring GRANTEE Approval. The owner of the EASEMENT AREA may, at any time, request GRANTEE approve any of the following actions:
- (1) Cover any part of the agricultural area with additional impervious surface or gravel. GRANTEE approval is not required if the action is permitted pursuant to compliance with any applicable government-approved conservation practices.
  - (2) Land division of any portion of the EASEMENT AREA
  - (3) Detach and sell separately the agricultural area or the farmstead area
  - (4) Alter the land surface in the agricultural area in excess of one (1) acre. GRANTEE approval is not required if the action is permitted pursuant to compliance with any applicable government-approved conservation practices.
  - (5) Materially expand or alter any pre-existing use or structure in the agricultural area. GRANTEE approval is not required if the action is permitted pursuant to compliance with any applicable government-approved conservation practices.
- A request for GRANTEE approval of any of the aforementioned activities shall be in writing and shall clearly and accurately describe the proposed action. The description shall include the nature, size, scope, location, design and other material features of the proposed action, and any other information reasonably required by GRANTEE.
- 3.7 Requirements for GRANTEE Approval of Actions. GRANTEE may approve a proposed action in response to a written request under Sec. 3.6 if all of the following apply:
- (1) The proposed action and subsequent land use is consistent with the purpose of this EASEMENT.
  - (2) The proposed action and subsequent land use will not violate Sec. 3.1 or 3.2

(3) The proposed use will not unnecessarily convert prime farmland or cropland, will not convert the primary use of the EASEMENT AREA to a use other than agricultural use, and will not materially impair or limit any surrounding agricultural uses.

3.8 GRANTEE Decision and Action. GRANTEE will grant or deny, in writing, a written request under Sec. 3.6 within a reasonable time period after receiving a complete written request. GRANTEE may deny a request in their sole discretion, and are not required to justify any denial. GRANTOR may grant approval subject to conditions specified in the approval. Conditions may include deadlines for the beginning or completion of a proposed action. An approval for any action identified in Sec. 3.6 is not effective unless given by GRANTEE.

#### **IV. EASEMENT AREA OWNER RIGHTS RESERVED AND RESPONSIBILITIES**

4.1 EASEMENT AREA Owner Rights Reserved. Except as provided in this EASEMENT, all rights enjoyed by current or future owners of the EASEMENT AREA are reserved to those owners. This EASEMENT does not limit any owner's right to use, improve, transfer, bequeath, lease, restrict access to, grant a mortgage or other interest in, encumber or convey the EASEMENT AREA, except as provided in this EASEMENT. The terms, conditions, restrictions and purpose of this EASEMENT shall be referenced in any subsequent deed or other legal instrument by which the owners divest themselves of any interest in the EASEMENT AREA. GRANTEE shall be notified in writing of the name(s) and address(es) of any party to whom an interest in the EASEMENT AREA is granted, conveyed or otherwise transferred, at or prior to the time said transfer is executed. No provision of this EASEMENT shall be construed as impairing the ability of the owners to use the premises as collateral for any subsequent loan, provided that any mortgage or lien arising from such a transaction must not be inconsistent with the terms of this EASEMENT, and must be subordinate to this EASEMENT. This EASEMENT does not give the general public any right of access to any portion of the EASEMENT AREA, nor does it limit any right of public access that otherwise exists.

4.2 EASEMENT AREA Owner Responsibilities. Except as specifically provided in this EASEMENT:

- (1) This EASEMENT does not relieve GRANTOR, or any subsequent owners, occupiers or users of the EASEMENT AREA, from any responsibility or liability which they currently have or may subsequently incur in connection with the EASEMENT AREA.
- (2) GRANTEE assumes no responsibility for the use, management, control, operation, upkeep or maintenance of the EASEMENT AREA, and assumes no liability for any action or omission related to the use, management, control, operation, upkeep or maintenance of the EASEMENT AREA.

#### **V. EASEMENT ENFORCEMENT**

5.1 EASEMENT Enforcement. GRANTEE, THIRD-PARTY ENFORCER, or their authorized agents, may do any of the following:

- (1) Upon reasonable prior notice and at reasonable times, enter onto the EASEMENT AREA to monitor compliance and collect evidence of noncompliance.
- (2) Issue notice of apparent EASEMENT violations to an alleged violator. The notice may include a demand for timely corrective action. A notice under this Sub-section is not a prerequisite to court action under Sub-section (3).
- (3) Initiate action in court to enjoin an apparent violation of this EASEMENT. The action may include a request for an ex parte restraining order or temporary injunction, as circumstances may warrant. The court may enjoin the violation, require appropriate corrective action, award costs, and grant any other relief to which GRANTEE may be entitled.



No failure on the part of either GRANTEE or THIRD-PARTY ENFORCER to enforce any term of this EASEMENT shall discharge or invalidate the term or any other provision of this EASEMENT or affect the rights of either GRANTEE or THIRD-PARTY ENFORCER to enforce this EASEMENT in the event of a subsequent breach or default.

- 5.2 EASEMENT Baseline Documentation Report. GRANTOR and GRANTEE agree that the present uses and physical condition of the EASEMENT AREA, at the time of EASEMENT execution, are accurately identified in a Baseline Documentation Report, prepared by the GRANTEE and signed and acknowledged by the GRANTOR. A copy of this Report is maintained at the office of the GRANTEE. Such report may be used by GRANTEE in any EASEMENT enforcement action.

## VI. EASEMENT TRANSFER/ASSIGNMENT, AMENDMENT, AND TERMINATION

- 6.1 EASEMENT Transfer or Assignment. GRANTEE may transfer or assign its interest as GRANTEE of this EASEMENT to another entity qualified to accept said transfer or assignment, under Sec. 93.73 and 700.40(1)(b), Wis. Stats. Transfer or assignment of this EASEMENT terminates GRANTEE'S rights and obligations under this EASEMENT. Any acts or omissions occurring prior to the transfer or assignment of an interest in the land or in this EASEMENT will survive said transfer or assignment.

In the event of the dissolution of the GRANTEE, GRANTEE'S interest will be assigned only to a qualified entity, as described in the preceding paragraph, and as approved by the UNITED STATES.

- 6.2 EASEMENT Amendment. The terms and conditions of this EASEMENT may be amended with the written consent of GRANTEE and all the persons who own the EASEMENT AREA at the time of the amendment. An amendment under this Sec. does not include an amendment that extinguishes this EASEMENT. GRANTEE may give their consent to amendment of this EASEMENT only if the amendment is consistent with the purpose of this EASEMENT, does not affect the perpetual duration of this EASEMENT and does not materially weaken the EASEMENT to the detriment of GRANTEE. GRANTEE may withhold their consent in their sole discretion, and are not required to justify any withholding of consent. An EASEMENT amendment is not effective unless it is in writing, and signed by all of the persons who are required to give their consent. A signed written amendment takes effect when signed by all PARTIES.
- 6.3 EASEMENT Termination. This EASEMENT may be terminated at any time by court order if all of the following apply:
- (1) The purpose of this EASEMENT can no longer be achieved because of a material change in circumstances, or because of a lawful application of eminent domain authority. A change in the value of the EASEMENT AREA, or in an owner's intended use of said area, does not constitute a material change in circumstances under this Sub-section.
  - (2) All GRANTEES are fully and fairly compensated for the loss of this EASEMENT. Compensation shall include the EASEMENT purchase price and transaction costs incurred by the GRANTEE, plus a proportionate share of any increase in the appraised value of the EASEMENT AREA between the date of execution of this EASEMENT and the date on which this EASEMENT is terminated. That proportionate share shall be calculated as the increase in appraised value, multiplied by the ratio of the EASEMENT purchase price cost to the total appraised value of the EASEMENT AREA on the date of execution of this EASEMENT. A reduction in appraised value does not affect the compensation required under this Sub-section.

## VII. FEDERAL REQUIREMENTS

- 7.1 Environmental Warranty. GRANTOR warrants that they are in compliance with, and shall remain in compliance with, all applicable environmental laws. GRANTOR warrants that there are no notices by any governmental authority of any violation or alleged violation of non-compliance or alleged non-compliance with or any liability under any environmental law relating to the operations or conditions of the EASEMENT AREA. GRANTOR further warrants that they have no actual knowledge of a release or threatened release of hazardous materials, as such substances and wastes are defined by applicable federal and state law. Moreover, GRANTOR hereby promise to hold harmless and indemnify GRANTEE and the UNITED STATES against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the EASEMENT AREA, or arising from or connected with a violation of environmental laws by GRANTOR or any other prior owner of the EASEMENT AREA. GRANTORS' indemnification obligation shall not be affected by any authorizations provided by GRANTEE or the UNITED STATES to GRANTOR with respect to the EASEMENT AREA or any restoration activities carried out by GRANTEE or UNITED STATES on the EASEMENT AREA; provided, however, that GRANTEE and UNITED STATES shall be responsible for any hazardous materials contributed after this date to the EASEMENT AREA by GRANTEE. The UNITED STATES shall be responsible for any hazardous materials contributed after this date to the EASEMENT AREA by the UNITED STATES.
- 7.2 Third-Party Enforcement Rights. Under this EASEMENT, the UNITED STATES is granted third-party enforcement rights in order to protect the public investment. The Secretary or his or her assigns, on behalf of the UNITED STATES, may exercise these enforcement rights under any authority available under State or Federal law if the GRANTEE fails to enforce any of the terms of this EASEMENT, as determined in the sole discretion of the Secretary.
- 7.3 Conservation Compliance. As required by Sec. 1238I of the Food Security Act of 1985, as amended, GRANTOR, their heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the EASEMENT AREA in a manner consistent with a conservation plan prepared in consultation with NRCS and the Rock County Land Conservation Department. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of execution of this EASEMENT. However, the GRANTOR may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the EASEMENT AREA with advance notice to GRANTOR, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with GRANTOR to explore methods of compliance and give GRANTOR a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. If GRANTOR does not comply with the conservation plan, NRCS will inform GRANTEE of GRANTORS' noncompliance. GRANTOR shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS of all of the following:

- (1) There is a substantial, ongoing event or circumstance of non-compliance with the conservation plan.
- (2) NRCS has worked with GRANTOR to correct such noncompliance.
- (3) GRANTOR has exhausted its appeal rights under applicable NRCS regulations.

In the event that these aforementioned obligations conflict with state compliance requirements under Sec. 3.4, GRANTOR must satisfy the state requirements to meet their obligations under this EASEMENT.

**VIII. GENERAL PROVISIONS**

8.1 General Indemnification. GRANTOR shall indemnify and hold harmless GRANTEE and the UNITED STATES, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) relating to the EASEMENT AREA, which may arise from, but are not limited to, GRANTORS' negligent acts or omissions or GRANTORS' breach of any representation, warranty, covenant, agreements contained in this EASEMENT, or violations of any Federal, State, or local laws, including all environmental laws.

8.2 Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, provided that if any party gives notice of a change of name or address or number, notices to that party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice or demand is being given.

If to GRANTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to GRANTEE:

Rock County PACE Program  
441 N. U.S. Highway 44  
Janesville, WI 53545  
Phone: (608)754-6617 Ext: 115  
Fax: 608.752.1247

If to THIRD-PARTY ENFORCER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.3 References and Exhibits. Unless otherwise indicated, all article, section, sub-section, and exhibit references are to the articles, sections, sub-sections, and exhibits of this EASEMENT, and except where otherwise stated, all references to days are to calendar days. All exhibits to which reference is made in this EASEMENT are deemed incorporated in this EASEMENT whether or not actually attached. The following exhibits are attached to this EASEMENT:

- (1) Exhibit A: EASEMENT AREA - LEGAL DESCRIPTION
- (2) Exhibit B: EASEMENT AREA - MAP
- (3) Exhibit C: EASEMENT AREA PRE-EXISTING USES AND STRUCTURES - MAP

8.4 Severability. If any provision of this EASEMENT or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the EASEMENT and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

8.5 Entire Agreement. This instrument sets forth the entire agreement of the PARTIES with respect to this EASEMENT and supersedes all prior discussion, negotiations, understandings, or agreements relating to the EASEMENT, all of which are merged herein.

8.6 No Merger. Should GRANTEE acquire fee simple title to the EASEMENT AREA, no merger shall occur and this EASEMENT and the fee shall continue to be managed as separate estates.

**GRANT OF AGRICULTURAL RESOURCES CONSERVATION EAEMENT BY LANDOWNER**

The following GRANTORS hereby sign and grant the EASEMENT described herein:

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Print Name)

State of Wisconsin )  
 ) ss  
County of Rock )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_

(Name of GRANTOR)

\_\_\_\_\_  
(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires (is permanent) \_\_\_\_\_

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Print Name)

State of Wisconsin )  
 ) ss  
County of Rock )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_

(Name of GRANTOR)

\_\_\_\_\_  
(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires (is permanent) \_\_\_\_\_

**CONSENT TO EASEMENT BY MORTGAGE HOLDER/LIEN HOLDER**

\_\_\_\_\_  
(Signature of Authorized Individual) of \_\_\_\_\_  
(Name of Institution Holding Mortgage/Lien)

being the owner and holder of certain \_\_\_\_\_, recorded \_\_\_\_\_, in \_\_\_\_\_  
(Mortgage/Lien) (Date of Recording) (Recording Data)

State of Wisconsin )  
 ) ss  
County of Rock )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_

(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires (is permanent) \_\_\_\_\_

ACCEPTANCE OF INTEREST BY THE UNITED STATES OF AMERICA

The Natural Resources Conservation Service, United States Department of Agriculture, an agency of the United States Government, hereby accepts and approves the foregoing Agricultural Resources Conservation Easement, and the rights conveyed therein, on behalf of the United States of America.

Name: \_\_\_\_\_  
Wisconsin State Conservationist

State of WISCONSIN

County of Rock

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the State, personally appeared \_\_\_\_\_ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the \_\_\_\_\_ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the conservation easement to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Wisconsin  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

30-2011

ACCEPTANCE OF EASEMENT BY ROCK COUNTY

\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_  
(Print Name) (Title) (Rock County)  
does hereby accept the EASEMENT described herein:

By: \_\_\_\_\_  
(Signature of Authorized Representative)  
\_\_\_\_\_  
(Print Name, Title)

State of Wisconsin )  
County of Rock ) ss )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
as \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Rock County)

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires (is permanent) \_\_\_\_\_

DRAFT

**EXHIBIT A:**

**EASEMENT AREA - LEGAL DESCRIPTION**

**EXHIBIT B:**

**EASEMENT AREA - MAP**

**EXHIBIT C:**

**EASEMENT AREA PRE-EXISTING USES AND STRUCTURES - MAP**

**DRAFT: 3-30-2011**

**AGREEMENT FOR CONVEYANCE OF AN  
AGRICULTURAL CONSERVATION EASEMENT  
AND ESCROW INSTRUCTIONS – DRAFT: 3-30-2011**

This AGREEMENT FOR CONVEYANCE OF AN AGRICULTURAL CONSERVATION EASEMENT and Escrow Instructions (“**Agreement**”) is made and entered into as of the date on which this Agreement is mutually signed by the parties (“**Effective Date**”), by and between \_\_\_\_\_ and \_\_\_\_\_, (“**Conveyor**”), and THE COUNTY OF ROCK, a political subdivision of the State of Wisconsin (“**Conveyee**”).

**RECITALS**

- A. WHEREAS, Conveyor owns real property located in Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, Town of \_\_\_\_\_, Rock County Tax Parcel Number(s) \_\_\_\_\_, Rock County, State of Wisconsin, encompassing approximately \_\_\_\_\_ acres of land more particularly described and identified in Exhibit A and Exhibit B respectively, (“**Property**”); and
- B. WHEREAS, Conveyee is a political subdivision of the State of Wisconsin and administers a Purchase of Agricultural Conservation Easements (PACE) Program (“**Program**”), tasked with protecting and preserving productive agricultural lands in the County through acquisition of agricultural conservation easements, to encourage and promote the goals of a strong agricultural economy and community identity, intergovernmental cooperation, and a regional land use vision throughout the County; and
- C. WHEREAS, Conveyor desires to convey, via sale and/or donation, and Conveyee desires to acquire, via purchase and/or donation, an Agricultural Conservation Easement (“**Easement**”) on the Property, in a form substantially consistent with that identified in Exhibit E, encompassing approximately \_\_\_\_\_ acres of land more particularly identified in Exhibit B, to proceed towards achievement of the aforementioned goals; and
- D. WHEREAS, the Conveyee will acquire the Easement from the Conveyor, utilizing any, or a combination of the following:
- (1) Funds from the Program
  - (2) Funds from a source other than the Program
  - (3) Conveyor donation; and
- E. WHEREAS, the Rock County Land Conservation Committee has approved the Easement for acquisition at a public meeting held \_\_\_\_\_, 2011.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Conveyor and Conveyee hereby agree as follows:

## I. GENERAL AGREEMENT

1.1 Conveyance. Conveyor agrees to sell and/or donate to Conveyee, and Conveyee agrees to purchase and/or accept donation from Conveyor, an Easement on the Property "AS IS" with all faults and without representation or warranty, subject to all terms and conditions as stated herein.

1.2 Access and Inspection. From and after the Effective Date and before the Closing Date, per Sec. 6.1, Conveyee, its agents, employees, consultants and contractors, and representatives of organizations or agencies constituting potential sources of funding for this Easement acquisition shall have a license to enter the Property for a reasonable period of time, upon reasonable prior notice to Conveyor, at Conveyee's sole cost and expense, for the purposes of:

- (1) Conducting Due Diligence Investigations, per Sec. 2.6, and to otherwise inspect the Property in order to determine condition and suitability
- (2) Conducting Easement appraisals, Easement appraisal reviews, and/or any other associated activity, per Sec. 4.2 and 4.3
- (3) Securing funds for Easement acquisition from a source other than the Program

Upon completion of such activities, Conveyee shall return the Property to Conveyor in substantially the same condition it was in prior to Conveyee's entry thereon. As limited exclusively to activities related to the exercise of this "Access and Inspection" provision of the Agreement, Conveyee hereby agrees to indemnify, defend and hold harmless Conveyor, and the Property, from and against any and all loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense whatsoever arising out of or in any way connected with the acts or omissions of Conveyor its agents, contractors, consultants, engineers, or representatives on or in respect to the Property.

1.3 Easement Survey, Easement Appraisal, and Easement Appraisal Review. An Easement survey may be required per Sec. 4.1, and an Easement appraisal and Easement appraisal review shall be required per Sec. 4.2 and 4.3 respectively, to allow for conveyance of the Easement from the Conveyor to the Conveyee, subject to all other terms and conditions as stated herein. Easement survey, Easement appraisal, and Easement appraisal review cost shall be incurred per Sec. 4.2.

1.4 Rock County Agricultural Resources Conservation Easement – Offer of Purchase and Donation. Both parties shall execute a *Rock County Agricultural Resources Conservation Easement – Offer of Purchase and Donation*, in a form substantially consistent with that identified in Exhibit D, stating the Easement's Purchase Price, per Sec. 5.1, agreement by both parties to said price, and that amount of the Easement's fair market value, identified and confirmed per Sec. 4.2 and 4.3 respectively, to be donated by the Conveyor to the Conveyee.

1.5 Rock County Agricultural Resources Conservation Easement. Conveyor shall convey the Easement to Conveyee at the Closing Date, per Sec. 6.1, via a *Rock County Agricultural Resources Conservation Easement* ("**Easement Document**") in a form substantially consistent with that identified in Exhibit E, and recorded with the Rock County Register of Deeds per Sec. 6.3 (1).

1.6 Rock County Agricultural Resources Conservation Easement Holding and Enforcement. The Program shall, and any funding source other than the Program if said funding source is utilized to acquire the Easement and/or a non-profit conservation organization may, hold and enforce the Easement Document, subject to all terms and conditions as stated therein.



- 1.7 Termination of Agreement. Either party reserves the right to terminate this Agreement at any time, at either party's discretion, with the party terminating the Agreement required to provide written notice of termination to the other party by Certified Mail, Return Receipt Requested. Termination of this Agreement shall be subject to all other terms and conditions as stated herein.

## II. ESTABLISHMENT OF ESCROW AND DUE DILLIGENCE

- 2.1 Establishment of Escrow. On or before the date which is ten (10) days after the Effective Date, Conveyee will establish an escrow ("**Escrow**") with \_\_\_\_\_ ("**Escrow Holder**"). The provisions of this Agreement will constitute joint instructions to Escrow Holder; provided, however, that the parties will execute such additional instructions as desired by the parties, or either of them, or as requested by Escrow Holder, and not inconsistent with the provisions of this Agreement.

- 2.2 Title Document and Conveyor Information Review. On or before the date which is ten (10) days after establishment of Escrow, Conveyee, at its sole cost, shall obtain from Escrow Holder an updated Minimum Title Insurance Commitment of \$15,000 to Patent ("**Title Report**") for the Property, and copies of all instruments identified as exceptions therein (together with the Title Report, "**Title Documents**"), and Conveyor shall deliver to Conveyee any agreements between Conveyor and any other person or entity which affect the Property or rights therein, and all of the documents and materials listed below (collectively, "**Conveyor's Information**") to the extent in Conveyor's control or possession:

- (1) Environmental Hazards Assessment, if required under Wisconsin law
- (2) Surveys, reports, and studies related to the title, condition, development, or ownership of the Property
- (3) All other information in possession or control of Conveyor related to the title, condition, development, or ownership of the Property

Conveyee shall return to Conveyor all Conveyor's Information provided by Conveyor upon termination of this Agreement other than by the Closing Date. Conveyee shall have the right to make copies of Conveyor's Information at Conveyee's sole cost and expense, provided that if the Agreement is terminated for any reason other than by the Closing Date, Conveyee shall not retain copies of Conveyor's Information but shall return all such copies to Conveyor promptly upon said termination.

- 2.3 Title Document and Conveyor Information Review Objection. On or before the date which is twenty (20) calendar days after Conveyee receives all Title Documents and Conveyor Information ("**Objection Deadline**"), Conveyee shall give written notice ("**Objection Notice**") to Conveyor of any matter set forth in the Title Documents or Conveyor Information to which Conveyee objects ("**Objections**"). If Conveyee fails to tender an Objection Notice on or before the Objection Deadline, Conveyee shall be deemed to have approved and irrevocably waived any Objections to any matters covered by the Title Documents and Conveyor Information.
- 2.4 Title Document and Conveyor Information Review Objection Response. On or before the date which is ten (10) business days after Conveyor's receipt of the Objection Notice ("**Objection Response Deadline**"), Conveyor shall give Conveyee notice ("**Objection Response Notice**") of those Objections which Conveyor is willing to cure, if any. If Conveyee is dissatisfied with

the Objection Response Notice, Conveyee may elect, by written notice given to Conveyor on or before the Due Diligence Date, per Sec. 2.6, either of the following courses of action:

- (1) Accept the Title Documents with resolution, if any, of the Objections as set forth in the Objection Response Notice
- (2) Terminate this Agreement

If Conveyee fails to give notice to terminate this Agreement on or before the Due Diligence Date, Conveyee shall be deemed to have elected to approve and irrevocably waived any Objections to any matters covered by the Title Documents and Conveyor Information, subject only to resolution, if any, of the Objections as set forth in the Objection Response Notice.

2.5 Permitted Exceptions. The Offer and Easement Document delivered pursuant to this Agreement shall be subject to the following, all of which shall be deemed "**Permitted Exceptions**":

- (1) Standard printed exceptions in the Title Report, and any other matters shown in the Title Report not identified as Objections, per Sec. 2.3
- (2) General and special real property taxes and assessments
- (3) Any lien not yet due and payable
- (4) Any easements, encumbrances, covenants, conditions and restrictions of record approved by Conveyee

Permitted Exceptions shall not include those Objections, if any, which Conveyor has agreed to cure pursuant to the Objection Response Notice. Any exceptions to title shown on any supplement to the Preliminary Title Report that may be issued from time to time by the Escrow Holder must be removed by Conveyor at or prior to the Closing Date, unless such exceptions are expressly approved by Conveyee in writing or unless such exceptions constitute Permitted Exceptions.

2.6 Due Diligence. Conveyee's obligation to acquire the Easement is expressly conditioned on its approval, at its sole discretion, of the matters disclosed in the Title Documents or Conveyor's Information and of the condition of the Property and all other matters concerning the Property, including without limitation economic, financial, and accounting matters relating to or affecting the Easement Area or its value, and the physical and environmental condition of the Property. Conveyee shall have forty (40) calendar days after the Effective Date ("**Due Diligence Date**") to review the Title Documents and Conveyor's Information and to conduct such investigations as Conveyee may chose at Conveyee's sole cost and expense including any studies or investigations Conveyor may wish to conduct related to the condition of the Property (collectively "**Due Diligence Investigations**") to determine, in its sole discretion, whether this contingency is met.

2.7 Release of Due Diligence Contingency. In the event Conveyee elects to acquire the Easement, then on or before the Due Diligence Date, Conveyee will provide notice to Conveyor releasing the Due Diligence Contingency ("**Due Diligence Release Notice**"); if Conveyee fails to give such notice on or before said date, Conveyee shall be deemed to have elected to terminate this Agreement.

### III. TRANSACTION COSTS AND PAYMENT

3.1 Transaction Costs. Those financial expenditures, not to include the Purchase Price, per Sec. 5.1, necessary for the Conveyer to convey the Easement to the Conveyee ("**Transaction Costs**") include only the following:

- (1) Easement survey
- (2) Easement appraisals and Easement appraisal reviews
- (3) Recording fees
- (4) Other closing fees
- (5) Program signage posting

3.2 Earnest Account and Transaction Costs Payment. On or before the date which is ten (10) days after the Due Diligence Date, and before any Transaction Costs are incurred, Conveyer shall deposit \$\_\_\_\_\_ with the Escrow Holder ("**Earnest Account Funds**"). All Earnest Account Funds shall be returned to the Conveyer at the Closing Date, per Sec. 6.1. If this Agreement is terminated after the Due Diligence Date and prior to the Closing Date at the request of the Conveyer, Earnest Account Funds shall be dispersed to the Conveyee to cover any monies spent by the Conveyee on Easement surveys, Easement appraisals, or Easement appraisal reviews, with the remainder of said funds returned to the Conveyer within ten (10) days of receipt of the termination notice per Sec. 1.7. If this Agreement is terminated after the Due Diligence Date and prior to the Closing Date at the request of the Conveyee, all Earnest Account funds shall be fully reimbursed to the Conveyer within the aforementioned timeframe.

All Transaction Costs, subject to the terms and conditions of the preceding paragraph, shall be incurred by the Conveyee.

### IV. EASEMENT SURVEY, EASEMENT APPRAISAL, AND EASEMENT APPRAISAL REVIEW

4.1 Easement Survey. An Easement survey, performed by a land surveyor certified in the State of Wisconsin, shall be required if that area of the Property to be subject to the Easement ("**Easement Area**") does not conform to the Property's legal description as contained in the Property deed(s) and identified in Exhibit A, or Rock County tax parcel boundaries as identified in Exhibit B. The Easement survey shall identify the Easement Area and take either the form of a "Plat of Survey" substantially consistent with that identified in Exhibit C, or a form as required by a funding source other than the Program if said source will be utilized to acquire the Easement. The land surveyor/surveying firm shall be selected by the Conveyee in accordance with a Request for Qualifications and Cost Proposal ("**RFQCP**") and RFQCP Review Form, both as prepared by Conveyee. All Easement surveys shall be performed in accordance with the RFQCP, and after the Due Diligence Date. All Easement survey costs shall be incurred per Sec. 3.2.

Prior to the Easement appraisal, per Sec. 4.2., the Easement survey shall be submitted by the Conveyer to the Conveyer in both hard copy and a digital format compatible with the Rock County Geographic Information System (GIS), signed by the Program, and recorded with the Rock County Register of Deeds.

- 4.2 Easement Appraisal. An Easement appraisal, performed by an appraiser/appraisal firm certified in the State of Wisconsin, shall be required to identify the fair market value of the Easement. The appraiser/appraisal firm shall be selected by the Conveyee in accordance with a Request for Qualifications and Cost Proposal (“**RFQCP**”) and RFQCP Review Form, both as prepared by Conveyee. All Easement appraisals shall be performed in accordance with the RFQCP, and after the Due Diligence Date and Easement survey (if applicable). All Easement appraisal costs shall be incurred per Sec. 3.2.

A second Easement appraisal, performed by an appraiser/appraisal firm certified in the State of Wisconsin, may be required if the fair market value of the Easement, as determined through the Easement appraisal, is \$350,000 or greater. A second Easement appraisal shall be required at the sole discretion of the Conveyee or a funding source other than the Program if said source will be utilized to acquire the Easement. The appraiser/appraisal firm that will perform the second Easement appraisal review shall be selected in accordance with the procedure identified in the preceding paragraph.

- 4.3 Easement Appraisal Review. An Easement appraisal review, performed by an appraiser/appraisal firm differing than the individual/firm that performed the Easement appraisal, shall be required to confirm said appraisal is an accurate representation of the fair market value of the Easement. A funding source other than the Program, if said source will be utilized to acquire the Easement, shall select the appraiser/appraisal firm to conduct the Easement appraisal review. If no funding source other than the Program will be utilized to acquire the Easement, the appraiser/appraisal firm shall be selected by the Conveyee in accordance with a RFQCP and RFQCP Review Form, both as prepared by Conveyee. All Easement appraisal reviews shall be performed in accordance with the RFQCP, and after the Due Diligence Date and Easement survey (if applicable). All Easement appraisal review costs shall be incurred per Sec. 3.2.

A second Easement appraisal review shall be required following a second Easement appraisal. The appraiser/appraisal firm that will perform the second Easement appraisal review shall be selected in accordance with the procedure identified in the preceding paragraph.

## V. PURCHASE PRICE AND OFFER OF PURCHASE AND DONATION

- 5.1 Purchase Price. The purchase price of the Easement (“**Purchase Price**”) is that monetary amount payable to the Conveyor from the Conveyee to ensure conveyance of the Easement, subject to all other terms and conditions as stated herein. The Purchase Price shall not exceed the Easement’s fair market value as identified and confirmed per Sec. 4.2 and 4.3 respectively. The Purchase Price is payable to the Conveyor from the Conveyee at the Closing Date per Sec. 6.1.

The Conveyor shall donate to the Conveyee not less than \_\_\_\_\_% of the fair market value of the Easement.

- 5.2 Offer of Purchase and Donation. A *Rock County Agricultural Resources Conservation Easement - Offer of Purchase and Donation* (“**Offer**”), executed by the Conveyor and Conveyee, states the Purchase Price, stipulates agreement by both parties to said price, and states that amount of the Easement’s fair market value, as identified and confirmed per Sec. 4.2 and 4.3 respectively, to be donated by the Conveyor to the Conveyee. The Offer shall be in a form substantially consistent with that identified in Exhibit D.

The Offer shall be executed only after approval of the Easement acquisition by the Rock County Land Conservation Committee and after identification and confirmation of the fair market value of the Easement. No more than \_\_\_\_\_% of the total Program fund or \$\_\_\_\_\_, whichever is a lesser dollar amount, shall be allocated from said fund towards the Purchase Price.

The Offer shall also state the Conveyee shall have an option to acquire the Easement from the Conveyor before the Easement is offered to a third party, at a Purchase Price that does not exceed the Easement's fair market value as of the Closing Date. Conveyor will give Conveyee written notice of Conveyor's desire to convey the Easement to the Conveyee. The Conveyor may convey all or a portion of any ownership interest in the Property, including the Easement, to any third party no sooner than twelve (12) months from the date in which the Conveyee has been in receipt of said notice. Any attempt to convey the Easement without first offering it to Conveyee, in accordance with the aforementioned, shall be null and void and of no force or effect.

## VI. CLOSE OF ESCROW

6.1 Closing Date. The Close of Escrow ("**Closing Date**") shall occur fifteen (15) days after the release of the Financing Contingency per Sec. 7.1, unless other arrangements have been agreed upon by the Conveyor and Conveyee.

6.2 Closing Documents. The parties shall deposit all of the following with Escrow Holder prior to the Closing Date:

(1) Conveyee

- (a) Conveyee's duly executed acceptance of Easement Document in a form substantially consistent with that identified in Exhibit E, conveying the Easement from Conveyor to Conveyee, subject to applicable Permitted Exceptions per Sec. 2.5.
- (b) The duly executed Offer in a form substantially consistent with that identified in Exhibit D.
- (c) Such proof of Conveyee's authority and authorization to enter into and perform under this Agreement, and such proof of power and authority of the individuals executing or delivering any instruments, documents, or certificates on behalf of Conveyee to act for and bind Conveyee as may reasonably be required by an Easement acquisition funding source other than the Program or the Escrow Holder
- (d) The full Purchase Price funds per Sec. 5.1

(2) Conveyor.

- (a) Conveyor's duly executed acceptance of Easement Document in a form substantially consistent with that identified in Exhibit E, conveying the Easement from Conveyor to Conveyee, subject to applicable Permitted Exceptions per Sec. 2.5
- (b) Such proof of Conveyor's authority and authorization to enter into and perform under this Agreement, and such proof of power and authority of the individuals executing or delivering any instruments, documents, or certificates on behalf of

Conveyor to act for and bind Conveyor as may reasonably be required by an Easement acquisition funding source other than the Program or the Escrow Holder

(c) The full Earnest Account funds identified per Sec. 3.2

(3) Additional Instruments. Conveyor and Conveyee shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to proceed to the Closing Date and consummate the conveyance of the Easement in accordance with all terms and conditions stated herein and applicable law.

6.3 Actions by Escrow Holder. Upon deposit of the full Purchase Price funds in Escrow, Escrow Holder will notify parties of same in writing. On the Closing Date, provided each of the conditions precedent to the parties' obligations have been satisfied or waived, and when the Escrow Holder receives all documents and funds identified in Sec. 6.2 then, and only then, the Escrow Holder shall perform the following acts in the following order:

- (1) Recordation of the Easement Document with the Rock County Register of Deeds and delivery of conformed copies thereof to Conveyor and Conveyee within ten (10) days of recordation
- (2) Delivery to Conveyee conformed copies of the documents recorded pursuant to this Agreement and an executed copy of Conveyee's Escrow instructions.
- (3) Delivery to Conveyor conformed copies of the documents recorded pursuant to this Agreement and an executed copy of Conveyor's Escrow instructions.
- (4) Delivery to Conveyor and Conveyee signed closing statements showing all receipts and disbursements to Conveyor and Conveyee, and filing with the Internal Revenue Service (with copies to Conveyor and Conveyee) any reporting statement required by law

6.4 Broker's Commission. Conveyor and Conveyee each represent and warrant to the other that it is not a broker and it has not engaged any real estate broker or finder in connection with this transaction. If any broker or finder perfects a claim for a commission or finder's fee based on any contract, dealings, or communication with a party (Indemnifying Party), then the Indemnifying Party shall indemnify, defend, and hold the other party (Non-indemnifying Party) harmless from all costs and expenses (including reasonable attorney fees and costs of defense) incurred by the Non-indemnifying Party in connection with such claim. The representations, warranties, indemnities and agreements contained herein shall survive the Closing Date or earlier termination of this Agreement.

## VII. CONVEYEE'S CONTINGENCIES

7.1 Financing Contingency. The Conveyee shall be obligated to complete this transaction only if adequate funding (on terms and conditions acceptable to the parties) becomes available and is received by Conveyee and/or Escrow Holder on behalf of Conveyee for this transaction within twelve (12) months of the Effective Date. The Financing Contingency shall be released by either of the following actions:

- (1) Conveyee's receipt of notice from the Escrow Holder that the full Purchase Price funds have been deposited in Escrow
- (2) Conveyee's written notice to release Financing Contingency

The parties will cooperate in good faith to expedite the grant funding process to secure the funds necessary for this transaction and to have the full Purchase Price funds deposited in Escrow.

Prior to release of the Financing Contingency and at the request of the Conveyee, the Escrow Holder shall provide an update to the Title Report. This update shall be reviewed per Sec. 2.3, 2.4, and 2.5, unless other arrangements have been agreed upon by the Conveyer and Conveyee.

- 7.2 Termination of Agreement for Failure of Contingency. If this Agreement is terminated or deemed to be terminated, after the Due Diligence Date and before the Closing Date, for failure of the contingency per Sec. 7.1, then any cancellation fee or other costs of the Escrow Holder resulting from termination, shall be borne equally by Conveyer and Conveyee, and each party shall pay its own expenses.

#### VIII. CONVEYOR'S PRECLOSING COVENANTS

- 8.1 Preservation of the Property. Conveyer covenants and agrees that during the term of this Agreement Conveyer shall not take any action with respect to the Property, nor permit activities to occur on the Property, if within the reasonable control of Conveyer, that would diminish or adversely affect the Easement Area without the prior written consent of Conveyee.
- 8.2 Operation and Maintenance. Conveyer, at its sole cost and expense, shall operate the Property, or cause it to be operated, in substantially the same manner as it has been operated before the Effective Date and shall maintain and keep the Property such that on the Closing Date the Easement Area is in at least as good condition and repair as on the Effective Date, reasonable wear and tear excepted. Seller shall not make any material alterations to the Easement Area without Conveyer's prior written consent.
- 8.3 No Amendments or Agreements. Conveyer shall not amend or waive any right under any existing agreement or enter into any new agreements in respect to the Easement Area, or amend or renew such agreements, the term of which or the effect of which shall extend beyond the Closing Date, without the prior written consent of Conveyee.
- 8.4 Notification. Conveyer shall promptly notify Conveyee of any material change in any condition with respect to the Easement Area or of any material event or circumstance that makes any representation or warranty of Conveyer under this Agreement untrue or misleading.

#### IV. GENERAL PROVISIONS

- 9.1 Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, provided that if any party gives notice of a change of name or address or number, notices to that party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice or demand is being given.

If to Conveyor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If to Conveyee:

Rock County PACE Program  
 441 N. U.S. Highway 14  
 Janesville, WI 53546  
 Phone: (608) 754-6617 (Ext: 3)  
 Fax: (608) 752-1247

- 9.2 Agreement Modification. This Agreement, together with all Exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a written Addendum signed by both parties.
- 9.3 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 9.4 No Merger. This Agreement, each provision of it, shall survive the Closing Date and shall not merge in any instrument conveying any other interest or right in real property to Conveyee. All representations, warranties, agreements, and obligations of the parties shall, despite any investigation made by any party to this Agreement, survive the Closing Date, and the same shall inure to the benefit of and be binding on the parties' respective successors and assigns.
- 9.5 References. Unless otherwise indicated, all article, section, and exhibit references are to the articles, sections, and exhibits of this Agreement, and except where otherwise stated, all references to days are to calendar days.
- 9.6 Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin applicable to contracts made by residents of the State of Wisconsin to be performed in Wisconsin.
- 9.7 Time. Time is of the essence in the performance of the parties' respective obligations under this Agreement.
- 9.8 Attorneys' Fees. Each party shall bear its own attorneys' fees and expenses in the preparation and review of this Agreement. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.
- 9.9 Successors and Assigns; No Assignment. This Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective successors and assigns. Conveyee shall not have the right to assign any portion of its interest in this Agreement.



9.10 Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded. Unless otherwise expressly provided, all covenants, conditions and obligations of the parties set forth in this Agreement shall survive the Closing Date.

9.11 Cooperation. The parties agree to execute such instructions to the Escrow Holder, and to the grant funder, if applicable, and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

9.12 Exhibits. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached. The following exhibits are attached to this Agreement:

- (1) Exhibit A: Legal Description of the Property
- (2) Exhibit B: Map of Property and Easement
- (3) Exhibit C: Plat of Survey: Example
- (3) Exhibit D: *Rock County Agricultural Resources Conservation Easement - Offer of Purchase and Donation*: Boilerplate
- (4) Exhibit E: *Rock County Agricultural Resources Conservation Easement*: Boilerplate

9.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

9.14 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

9.15 Confidentiality and Publicity. Before the Closing Date, the parties shall at all times keep this transaction and any documents received from each other confidential, except to the extent necessary to ensure all of the following:

- (1) Comply with applicable law and regulations
- (2) Carry out the obligations set forth in this Agreement
- (3) Secure Easement acquisition funding from a source other than the Program

Any such disclosure to third parties shall indicate that the information is confidential and should be so treated by the third party. No press release or other public disclosure may be made by either party or any of its agents concerning this transaction without the other party's prior written consent. The parties will coordinate and cooperate in good faith as to all public disclosure of information regarding this transaction, including without limitation any press release regarding the award of grant funding, the fact of the agreement and/or the closing of escrow. Each party shall have the right to approve, in advance and in a timely manner, any such publicity.

IN WITNESS WHEREOF, the parties have executed this **Agreement for Conveyance of an Agricultural Conservation Easement and Escrow Instructions** as of latest date on which this Agreement is signed by the parties as set forth below.

|                                     |   |
|-------------------------------------|---|
| CONVEYOR: _____ and<br>_____, _____ | CONVEYEE: COUNTY OF ROCK, a political subdivision of the State of Wisconsin |
| Signature: _____                    | Signature: _____  |
| Printed Name: _____                 | Printed Name: _____   |
| Title: _____                        | Title: _____  |
| Date: _____                         | Date: _____   |

ACCEPTANCE BY ESCROW HOLDER

Escrow Holder hereby acknowledges that it has received a fully executed counterpart of the foregoing **Agreement for Conveyance of an Agricultural Conservation Easement and Escrow Instructions** and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

|                      |
|----------------------|
| ESCROW HOLDER: _____ |
| Signature: _____     |
| Printed Name: _____  |
| Title: _____         |
| Date: _____          |

**EXHIBIT A:**

**Legal Description of Property**

**EXHIBIT B:**

**Map of Property and Easement**

**EXHIBIT C:**

**Plat of Survey: Example**

**EXHIBIT D:**

*Rock County Agricultural Resources Conservation Easement –  
Offer of Purchase and Donation: Boilerplate*

**EXHIBIT E:**

*Rock County Agricultural Resources Conservation Easement: Boilerplate*

**DRAFT: 3-30-2011**