

**RESOLUTION
ROCK COUNTY BOARD OF SUPERVISORS**

LAND CONSERVATION
COMMITTEE
INITIATED BY



WADE THOMPSON
DRAFTED BY

LAND CONSERVATION
COMMITTEE
SUBMITTED BY

DECEMBER 28, 2011
DATE DRAFTED

**AMENDING THE 2012 LAND CONSERVATION DEPARTMENT BUDGET AND APPROVAL OF
CONVEYANCE AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF
AGRICULTURAL CONSERVATION EASEMENTS PROGRAM**

1 **WHEREAS**, the Rock County Board of Supervisors officially approved the Rock County Purchase of
2 Agricultural Conservation Easements (PACE) Program and adopted the document entitled Rock County PACE
3 Program Manual, identifying and outlining all aspects of Program development and implementation, on
4 January 13, 2011; and,
5

6 **WHEREAS**, the mission of the Rock County PACE Program is to work in cooperation with local governments to
7 enhance Rock County's quality of life by building consensus towards a regional vision, to include preservation of
8 agricultural land, the agricultural economy, and the County's rural character, and responsible growth and
9 development in appropriate areas; and,
10

11 **WHEREAS**, the Program works to achieve its mission by acquiring agricultural conservation easements
12 (Easements) on eligible lands throughout unincorporated Rock County; and,
13

14 **WHEREAS**, applications were submitted by landowners to the Program in 2011, with said applications reviewed
15 by Rock County Land Conservation Department (LCD) staff, the Rock County PACE Council, and the Rock
16 County Land Conservation Committee (LCC), with four applications recommended for approval by LCD and the
17 Council, and approved by the LCC, all in accordance with the Rock County PACE Program Manual; and,
18

19 **WHEREAS**, application approval by the LCC authorizes the LCD to begin the Easement acquisition process on
20 Properties identified in said applications, subject to the consent of the landowners, as follows:
21

- 22 1. Krajeck Property: Rock County Tax Parcel Number 6-20-143, Section 18, Town of Union;
- 23 2. Carlson Property: Rock County Tax Parcel Numbers 6-5-304 and 6-5-325, Sections 32 and 33, Town
24 of Clinton;
- 25 3. Phelps Property: Rock County Tax Parcel Numbers 6-20-100, 6-20-101.1, and 6-20-104A, Sections 12
26 and 13, Town of Union;
- 27 4. Anderson Property: Rock County Tax Parcel Number 6-11-120, Section 17, Town of Lima; and,
28

29 **WHEREAS**, to move towards completion of the Easement acquisition process, each of the owners of the
30 aforementioned Properties (Applicants), Rock County, and Brabazon Title Company, Inc. will sign and execute a
31 *Rock County – Conveyance Agreement and Escrow Instructions – Agricultural Resources Conservation Easement*,
32 identifying and outlining all aspects of the Easement acquisition process, including but not limited to, the
33 following activities, subject to all terms and conditions as stated therein:
34

- 35 1. Opening escrow with Brabazon Title Company, Inc. and Securing a Minimum Title Insurance
36 Commitment of \$15,000 (Title Report) for each Property - County Activity;
- 37 2. Applicant depositing three thousand dollars (\$3,000) in the established escrow account - Landowner
38 Activity;
- 39 3. Rock County contracting with an appraiser to determine the fair market value (Appraisal) of an
40 Easement on each Property - County Activity; and,
41

42 **NOW, THEREFORE, BE IT RESOLVED**, the Rock County Board of Supervisors duly assembled this
43 12 day of January, 2012, do by enactment of this Resolution approve a *Rock County –*
44 *Conveyance Agreement and Escrow Instructions – Agricultural Resources Conservation Easement* for each
45 Property, authorizing the LCD to undertake activities identified therein and obligate all necessary funds to
46 complete said activities,
47

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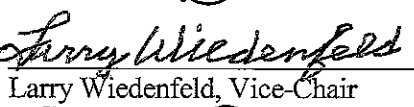
48 **BE IT FURTHER RESOLVED**, that the Rock County Board of Supervisors amends the Land
 49 Conservation Department's PDR/PACE Program budget as follows:

51	<u>A/C DESCRIPTION</u>	<u>BUDGET AT</u>	<u>INCREASE</u>	<u>AMENDED</u>
52		<u>01/01/2012</u>	<u>(DECREASE)</u>	<u>BUDGET</u>
53	Source of Funds:			
54	62-6350-0000-47000	\$34,826	\$11,200	\$46,026
55	Transfer In			
56				
57	Use of Funds:			
58	62-6350-0000-62101	\$ 0	\$10,000	\$10,000
59	Appraisal Fees			
60				
61	62-6350-0000-65109	\$0	\$1,200	\$1,200
62	Other Insurance Fees			

Respectfully submitted:

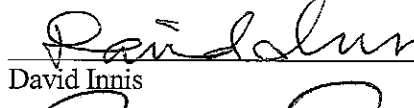
LAND CONSERVATION COMMITTEE



 Richard Bostwick, Chair

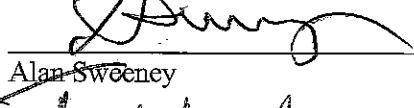

 Larry Wiedenfeld, Vice-Chair

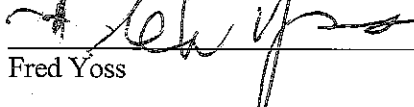

 Eva Arnold


 Ronald Combs


 David Innis


 Jim Quade

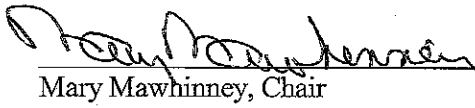

 Alan Sweeney


 Fred Yoss

FINANCE COMMITTEE ENDORSEMENT

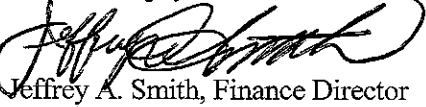
Reviewed and approved on a vote of

5-0


 Mary Mawhinney, Chair

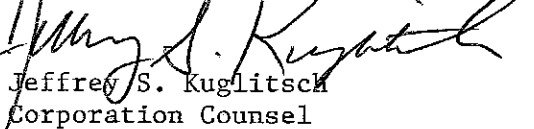
FISCAL NOTE:

This resolution authorizes an additional \$11,200 transfer in from Land Conservation's share of ATC fees to appropriate the funding for appraisals and title insurance for four properties under consideration for the purchase of easements under the PDR/PACE Program. Land Conservation's balance in the ATC fund as of November 30, 2011 was \$784,278. The land owners are responsible to deposit the escrow payments with the title company.


 Jeffrey A. Smith, Finance Director

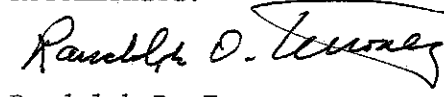
LEGAL NOTE:

The County Board is authorized to take this action pursuant to secs. 59.01, 59.51 and 93.73, Wis. Stats. As an amendment to the adopted 2012 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.


 Randolph D. Terronez
 Acting County Administrator

EXECUTIVE SUMMARY

This resolution amends the 2012 Land Conservation Department (LCD) Purchase of Agricultural Conservation Easements (PACE) budget and authorizes the County to enter into a *Rock County – Conveyance Agreement and Escrow Instructions – Agricultural Resources Conservation Easement* (Agreement) with landowners and Brabazon Title Company for four properties located in unincorporated Rock County. The Agreement identifies and outlines the agricultural conservation easement (Easement) acquisition process to be undertaken by the Rock County PACE Program, including establishing an escrow account to be held by Brabazon Title Company, purchasing title insurance, and contracting for appraisals of the Easements. Acquisition of Easements will protect and preserve productive agricultural lands in Rock County, encouraging and promoting the goals of a strong agricultural economy and community identity, intergovernmental cooperation, and a regional land use vision throughout the County.

If this resolution is approved, the LCD will continue with the Easement acquisition process on each of the four properties, and submit Easement acquisition funding applications to the USDA-Farm and Ranch Land Protection Program. Acquisition of the easements by Rock County is contingent upon funding from the USDA.



Rock County Land Conservation Department
441 N. U.S. Highway 14
Janesville, WI 53546
(608) 754-6617 (Ext: 3)

This space is reserved for recording data.

CONVEYANCE AGREEMENT
AND ESCROW INSTRUCTIONS -
AGRICULTURAL RESOURCES
CONSERVATION EASEMENT

This AGREEMENT TO CONVEY AN AGRICULTURAL
RESOURCES CONSERVATION EASEMENT and ESCROW
INSTRUCTIONS ("Agreement") is made and entered into as of the
date on which this Agreement is mutually signed ("Effective Date"),
by and between (landowner(s) name),
(husband/wife or individual(s)),
("Seller"), and the County of Rock, (a political subdivision of the State
of Wisconsin as defined in Sec. 93.73 (1m) (f), Wis. Stats.), ("Buyer").
The Buyer and Seller are hereinafter collectively referred to as the
"Parties", and individually as a "Party."

Return to:

Rock County Agricultural Resources
Conservation Easement Number:

RECITALS

- A. Seller 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, more particularly described and identified in
Exhibit A and Exhibit B respectively, ("Easement Area") (If there is any discrepancy between Exhibit A and Exhibit
B, Exhibit A shall control.); and,
B. Buyer 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. Seller desires to convey, via sale and donation, and Buyer desires to acquire, via purchase and donation, an
Agricultural Resources Conservation Easement ("Easement") on the Easement Area, in a form substantially
consistent with that identified in Exhibit E, encompassing approximately acres of land more
particularly described and identified in Exhibit A and Exhibit B respectively, to proceed towards achievement of the
aforementioned goals; and,
D. Buyer will acquire the Easement from the Seller, utilizing any, or a combination of, the following:
(1) Funds from the Program;
(2) Funds from a source other than the Program;
(3) Seller donation; and,

- E. The Rock County Land Conservation Committee has approved the Easement for acquisition at its regularly scheduled public meeting held _____, 2011; and therefore,
- F. 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, Seller and Buyer hereby agree as follows:

I. GENERAL AGREEMENT

- 1.1 Conveyance. Seller agrees to sell and donate to Buyer, and Buyer agrees to purchase and accept donation from Seller, an Easement on the Easement Area "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, Buyer, 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 Easement Area for a reasonable period of time, upon reasonable prior notice to Seller, at Buyer's sole cost and expense, for the purposes of:

- (1) Conducting Due Diligence Investigations, per Sec. 2.6, and to otherwise inspect the Easement Area in order to determine condition and suitability;
- (2) Conducting Easement surveys, Easement appraisals, Easement appraisal reviews, and/or any other associated activity, per Sec. 4.1, 4.2 and 4.3;
- (3) Conducting any activities necessary to secure funds for Easement acquisition from a source other than the Program;

Upon completion of such activities, Buyer shall return the Easement Area to Seller in substantially the same condition it was in prior to Buyer's entry thereon. As limited exclusively to activities related to the exercise of this "Access and Inspection" provision of the Agreement, Buyer hereby agrees to indemnify, defend and hold harmless Seller, and the Easement Area, 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 Seller its agents, contractors, consultants, engineers, or representatives on or in respect to the Easement Area.

- 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 Seller to the Buyer, subject to all other terms and conditions as stated herein. Easement survey, Easement appraisal, and Easement appraisal review cost shall be incurred per Sec. 3.2.
- 1.4 Option to Purchase Agreement – Agricultural Resources Conservation Easement. The Parties shall execute an Option to Purchase Agreement – Agricultural Resources Conservation Easement ("Option"), in a form substantially consistent with that identified in Exhibit D, stating the Easement's Purchase Price, per Sec. 5.1, and agreement by the Parties to said price.
- 1.5 Agricultural Resources Conservation Easement. Seller shall convey the Easement to Buyer at the Closing Date, per Sec. 6.1, via an 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 Agricultural Resources Conservation Easement Holding and Enforcement.
The Program shall, and any other Easement acquisition funding source 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, Buyer 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 Seller Information Review. On or before the date which is ten (10) days after establishment of Escrow, Buyer, at its sole cost, shall obtain from Escrow Holder an updated Minimum Title Insurance Commitment of \$15,000 to Patent ("**Title Report**") for the Easement Area, and copies of all instruments identified as exceptions therein (together with the Title Report, "**Title Documents**"), and Seller shall deliver to Buyer any agreements between Seller and any other person or entity which affect the Easement Area or rights therein, and all of the documents and materials listed below (collectively, "**Seller Information**") to the extent in Seller's control or possession:

- (1) Environmental hazards assessment/reports, if required under State law;
- (2) Any surveys, reports, and studies related to the title, condition, development, or ownership of the Easement Area;
- (3) All other information in possession or control of Seller related to the title, condition, development, or ownership of the Easement Area;

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

- 2.3 Title Document and Seller Information Review Objection. On or before the date which is twenty (20) days after Buyer receives all Title Documents and Seller Information ("**Objection Deadline**"), Buyer shall give written notice ("**Objection Notice**") to Seller of any matter set forth in the Title Documents or Seller Information to which Buyer objects ("**Objections**"). If Buyer fails to tender an Objection Notice on or before the Objection Deadline, Buyer shall be deemed to have approved and irrevocably waived any Objections to any matters covered by the Title Documents and Seller Information.

Additionally, Buyer intends to determine the compliance of the Easement Area with State and Federal laws regarding hazardous waste. The cost of such investigations and research shall be borne by Buyer or other Easement acquisition funding source. If such investigations determines that there has been a release or there is any threat of release of hazardous material or that the Easement Area is otherwise not in compliance with such laws, Buyer shall so notify Seller in the Objection Notice and send Seller a copy of any professional reports obtained by Buyer, whereupon Seller shall promptly remedy such non-compliance to the reasonable satisfaction of Buyer and governmental entity having jurisdiction, at Seller's sole cost and expense, per Sec. 2.4. Said professional report sent to the Seller shall also constitute an Objection.

- 2.4 Title Document and Seller Information Review Objection Response. On or before the date which is ten (10) days after Seller's receipt of the Objection Notice ("**Objection Notice Response Deadline**"), Seller shall give Buyer notice ("**Objection Notice Response**") of those Objections which Seller is willing to cure, if any. If Buyer is dissatisfied with the Objection Notice Response, Buyer may elect, by written notice given to Seller 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 Notice Response;
- (2) Terminate this Agreement;

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

2.5 Permitted Exceptions. The Option 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 Buyer;

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

2.6 Due Diligence. Buyer'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 Seller Information and of the condition of the Easement Area and all other matters concerning the Easement Area, 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 Easement Area. Buyer shall have forty (40) days after the Effective Date ("**Due Diligence Date**") to review the Title Documents and Seller Information, and to conduct such investigations as Buyer may choose at Buyer's sole cost and expense including any studies or investigations Buyer may wish to conduct related to the condition of the Easement Area (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 Buyer elects to acquire the Easement, then on or before the Due Diligence Date, Buyer shall provide notice to Seller releasing the Due Diligence Contingency ("**Due Diligence Contingency Release Notice**"); if Buyer fails to give such notice on or before said date, Buyer 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 Seller to convey the Easement to the Buyer ("**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 Funds 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, Seller shall deposit _____ and 00/100 dollars (\$___) with the Escrow Holder ("**Earnest Account Funds**"). All Transaction Costs shall be incurred by the Buyer, and all Earnest Account Funds shall be returned to the Seller at the Closing Date, per Sec. 6.1, subject to the following terms and conditions:

- (1) If this Agreement is terminated after the Due Diligence Date and prior to the Closing Date at the request of the Seller, Earnest Account Funds shall be dispersed to the Buyer to cover any monies contracted for or spent by the Buyer on Easement surveys, Easement appraisals, or Easement appraisal reviews, with any remaining funds returned to the Seller within ten (10) days of receipt of the termination notice per Sec. 1.7;
- (2) If this Agreement is terminated after the Due Diligence Date and prior to the Closing Date at the request of the Buyer, all Earnest Account funds shall be fully reimbursed to the Seller within ten (10) days of receipt of the termination notice per Sec. 1.7;
- (3) If this Agreement is terminated for failure of release of the Financing Contingency, per Sec. 7.1, Transactions Costs shall be incurred per Sec. 7.2;

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 the Easement Area does not conform to a Rock County tax parcel boundary 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 an Easement acquisition funding source other than the Program. The land surveyor shall be selected and contracted by the Buyer. All Easement surveys shall be performed after the Due Diligence Date and all Easement survey costs shall be incurred per Sec. 3.2.

The Easement survey shall be submitted by the Seller to the Buyer 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 certified in the State of Wisconsin, shall be required to identify the fair market value of the Easement. The appraiser shall be selected and contracted by the Buyer. All Easement appraisals shall be performed 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 certified in the State of Wisconsin and differing than the individual/organization that performed the initial Easement appraisal, may be required if the fair market value of the Easement as determined through the initial Easement appraisal, is \$350,000 or greater. A second Easement appraisal shall be required at the sole discretion of the Buyer or an Easement acquisition funding source other than the Program. The appraiser that will perform the second Easement appraisal shall be selected and contracted by the Buyer or said other Easement acquisition funding source.

4.3 Easement Appraisal Review. An Easement appraisal review, performed by an appraiser certified in the State of Wisconsin and differing than the individual/organization that performed the Easement appraisal, shall be required to confirm said appraisal is an accurate representation of the fair market value of the Easement. The appraiser shall be selected and contracted by the Buyer or an Easement acquisition funding source other than the Program. All Easement appraisal reviews shall be performed after the Due Diligence Date, Easement survey (if applicable), and Easement appraisal. All Easement appraisal review costs shall be incurred per Sec. 3.2.

If a second Easement appraisal is required, per Sec. 4.2, an appraisal review, as identified in the first paragraph of this Sec., shall only be required at the sole discretion of an Easement acquisition funding source other than the Program.

V. PURCHASE PRICE AND OPTION TO PURCHASE

- 5.1 Purchase Price. The purchase price of the Easement ("**Purchase Price**") is that monetary amount payable to the Seller from the Buyer to ensure conveyance of the Easement, subject to all other terms and conditions as stated herein. The Purchase Price shall equal _____ percent (___ %) of the Easement's fair market value as identified and confirmed per Sec. 4.2 and 4.3 respectively. No more than _____ percent (___ %) of the total Program fund or _____ and 00/100 dollars (\$___), whichever is a lesser dollar amount, shall be allocated from said fund towards the Purchase Price. The Purchase Price is payable to the Seller from the Buyer at the Closing Date per Sec. 6.1.
- 5.2 Option to Purchase. The Option shall be executed by and between the Seller and Buyer and state all of the following:
- (1) The Purchase Price and agreement by the Parties to said price;
 - (2) The Buyer shall have the right to acquire the Easement from the Seller 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. The Seller may convey all or a portion of any ownership interest in the Easement Area, including the Easement, to any third party no sooner than twelve (12) months from the date of execution of the Option. Any attempt to convey the Easement without first offering it to Buyer, in accordance with the aforementioned, shall be null and void and of no force or effect.

The Option 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. The Option shall be in a form substantially consistent with that identified in Exhibit D.

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 Seller and Buyer.
- 6.2 Closing Documents. The Parties shall deposit all of the following with Escrow Holder prior to the Closing Date:
- (1) Buyer.
 - (a) Buyer's duly executed acceptance of the Easement Document in a form substantially consistent with that identified in Exhibit E, conveying the Easement from Seller to Buyer, subject to applicable Permitted Exceptions per Sec. 2.5;
 - (b) The duly executed Option in a form substantially consistent with that identified in Exhibit D;
 - (c) Such proof of Buyer'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 Buyer to act for and bind Buyer 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) Seller.

- (a) Seller's duly executed acceptance of the Easement Document in a form substantially consistent with that identified in Exhibit E, conveying the Easement from Seller to Buyer, subject to applicable Permitted Exceptions per Sec. 2.5;
- (b) Such proof of Seller'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 Seller to act for and bind Seller as may reasonably be required by an Easement acquisition funding source other than the Program or the Escrow Holder;

- (3) Additional Instruments. Seller and Buyer 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 Seller and Buyer within ten (10) days of recordation;
- (2) Delivery to Buyer conformed copies of the documents recorded pursuant to this Agreement and an executed copy of Buyer's Escrow instructions;
- (3) Delivery to Seller conformed copies of the documents recorded pursuant to this Agreement and an executed copy of Seller's Escrow instructions;
- (4) Delivery to Seller and Buyer signed closing statements showing all receipts and disbursements to Seller and Buyer, and filing with the Internal Revenue Service (with copies to Seller and Buyer) any reporting statement required by law;

VII. BUYER'S CONTINGENCIES

7.1 Financing Contingency. The Buyer 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 Buyer and/or Escrow Holder on behalf of Buyer for this transaction within twelve (12) months of the Effective Date ("Financing Contingency"). The Financing Contingency shall be released by either of the following actions:

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

The Parties will cooperate in good faith to expedite the Easement acquisition 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 Buyer, the Escrow Holder shall provide an updated supplement 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 Seller and Buyer.

7.2 Termination of Agreement for Failure of Release of Financing Contingency. If this Agreement is terminated or deemed to be terminated after the Due Diligence Date and before the Closing Date for failure of release of the Financing Contingency, then any Transaction Cost per Sec. 3.2, cancellation fee, or other costs of the Escrow Holder resulting from termination shall be borne equally by Seller and Buyer, and each Party shall pay its own expenses.

VIII. SELLER'S PRECLOSING COVENANTS

8.1 Preservation of the Easement Area. Seller covenants and agrees that during the term of this Agreement Seller shall not take any action with respect to the Easement Area, nor permit activities to occur on the Easement Area, if within the reasonable control of Seller, that would diminish or adversely affect the Easement Area without the prior written consent of Buyer.

8.2 Operation and Maintenance. Seller, at its sole cost and expense, shall operate the Easement Area, 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 Easement Area 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 Buyer's prior written consent.

8.3 No Amendments or Agreements. Seller 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 Buyer.

8.4 Notification. Seller shall promptly notify Buyer 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 Seller 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 either 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 Seller:

If to Buyer:

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

If to Escrow Holder:

- 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 Buyer. 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, sub-section, and exhibit references are to the articles, sections, sub-section, 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 and performed therein.
- 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. Buyer 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 an other Easement acquisition funding source (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: EASEMENT AREA: LEGAL DESCRIPTION
 - (2) Exhibit B: EASEMENT AREA: MAP
 - (3) Exhibit C: PLAT OF SURVEY: EXAMPLPLE
 - (4) Exhibit D: *OPTION TO PURCHASE AGREEMENT - AGRICULTURAL RESOURCES CONSERVATION EASMENT: BOILERPLATE*
 - (5) Exhibit E: *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 Broker's Commission. Seller and Buyer each represent and warrant to the other that it is not a broker and it has and will not engage 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.
- 9.16 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 the Parties 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 as of the latest date on which this Agreement is signed by the parties as set forth below.

SELLER:	and	BUYER: COUNTY OF ROCK, a political subdivision of the State of Wisconsin
(husband and wife or an individual (s))		
Signature: _____		Signature: _____
Printed Name: _____		Printed Name: _____
Date: _____		Title: _____
Signature: _____		Date: _____
Printed Name: _____		
Date: _____		

ACCEPTANCE BY ESCROW HOLDER:

Escrow Holder hereby acknowledges that it has received a fully executed counterpart of the foregoing Agreement 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:

EASEMENT AREA: LEGAL DESCRIPTION

EXHIBIT B:

EASEMENT AREA: MAP

EXHIBIT C:

PLAT OF SURVEY: EXAMPLE

EXHIBIT D:

***OPTION TO PURCHASE – AGRICULTURAL RESOURCES CONSERVATION EASEMENT:
BOILERPLATE***

EXHIBIT E:

AGRICULTURAL RESOURCES CONSERVATION EASEMENT: BOILERPLATE

DRAFT: 9-30-2011