

RESOLUTION NO. 2014-11

RESOLUTION BY THE EXECUTIVE COMMITTEE AUTHORIZING AN AMENDMENT TO THE CASH FARMLAND LEASE ENTERED INTO ON 17 DECEMBER 2012 INVOLVING THE SEVEN MILE ROAD SITE AND AUTHORIZING THE CREATION AND EXECUTION OF A TEMPORARY CONSTRUCTION EASEMENT BETWEEN RACINE COUNTY AND UNION PACIFIC RAILROAD COMPANY INVOLVING A FRACTION OF THE SEVEN MILE ROAD SITE

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED by the Racine County Board of Supervisors that an amendment to the Cash Farmland Lease for the Seven Mile Road Site that was executed on 17 December 2012 to accommodate and provide for a three (3) year credit based upon a 27.5% loss formula for the use of approximately 2.8 acres of the 10.9 acres, as shown on the map that is attached hereto as Exhibit "A", of the leased property and to provide for and execute a temporary construction easement to Union Pacific Railroad Company, a draft of which is set forth in Exhibit "B" which is attached hereto, is hereby authorized and approved. A copy of the easement between the parties will be on file with the County Clerk.

Respectfully submitted,

1st Reading _____

EXECUTIVE COMMITTEE

2nd Reading _____

Peter L. Hansen, Chairman

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

Russell A. Clark, Vice Chairman

Q.A. Shakoor, II, Secretary

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Mark M. Gleason

Pamela Zenner-Richards

Katherine Buske

Kenneth Lumpkin

David J. Cooke

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6 _____
7 Mike Dawson

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9 _____
10 Robert N. Miller

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12
13 **The foregoing legislation adopted by the County Board of Supervisors of**
14 **Racine County, Wisconsin, is hereby:**

15 **Approved:** _____

16 **Vetoed:** _____

17
18 **Date:** _____,

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20 _____
21 **James A. Ladwig, County Executive**

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25 **INFORMATION ONLY**

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27
28 **WHEREAS**, a four-year lease for The Seven Mile Road Site was entered into on 17
29 December 2012 between Racine County and Robert Grove; and

30
31 **WHEREAS**, Union Pacific Railroad Company approached the County in early May
32 to request construction access to the Union Pacific bridge that crosses the Root River
33 between Seven Mile and County Line Roads; and

34
35 **WHEREAS**, several site visits were made with representatives of Union Pacific and
36 multiple County representatives and it was determined that the only practical site that
37 could be utilized for staging is the approximately 2.8 acres on the northwest corner of the
38 Seven Mile Road Site; and

39
40 **WHEREAS**, although the tenant was scheduled to begin planting the leased
41 property within days of the final meeting with Union Pacific, he agreed to temporarily forfeit
42 use of that portion of the leased property for the period of the bridge replacement project
43 and the remediation of the land; and

44
45 **WHEREAS**, Union Pacific's use of the approximately 2.8 acres will result in tenant's
46 inability to farm that portion during the 2013 farming season and it is reasonably expected
47 that Union Pacific's construction activities may result in potential devaluation of
48 approximately 3 acres of the 10.9 acres that the County leases (*i.e.*, 27.5%); and

49
50 **WHEREAS**, the tenant will be credited back for the remaining three years of the
51 lease an amount that will reflect 27.5% of the annual rent for 2013 and discounted the

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6 same percentage for the remaining two years as well as the portion of lost income that

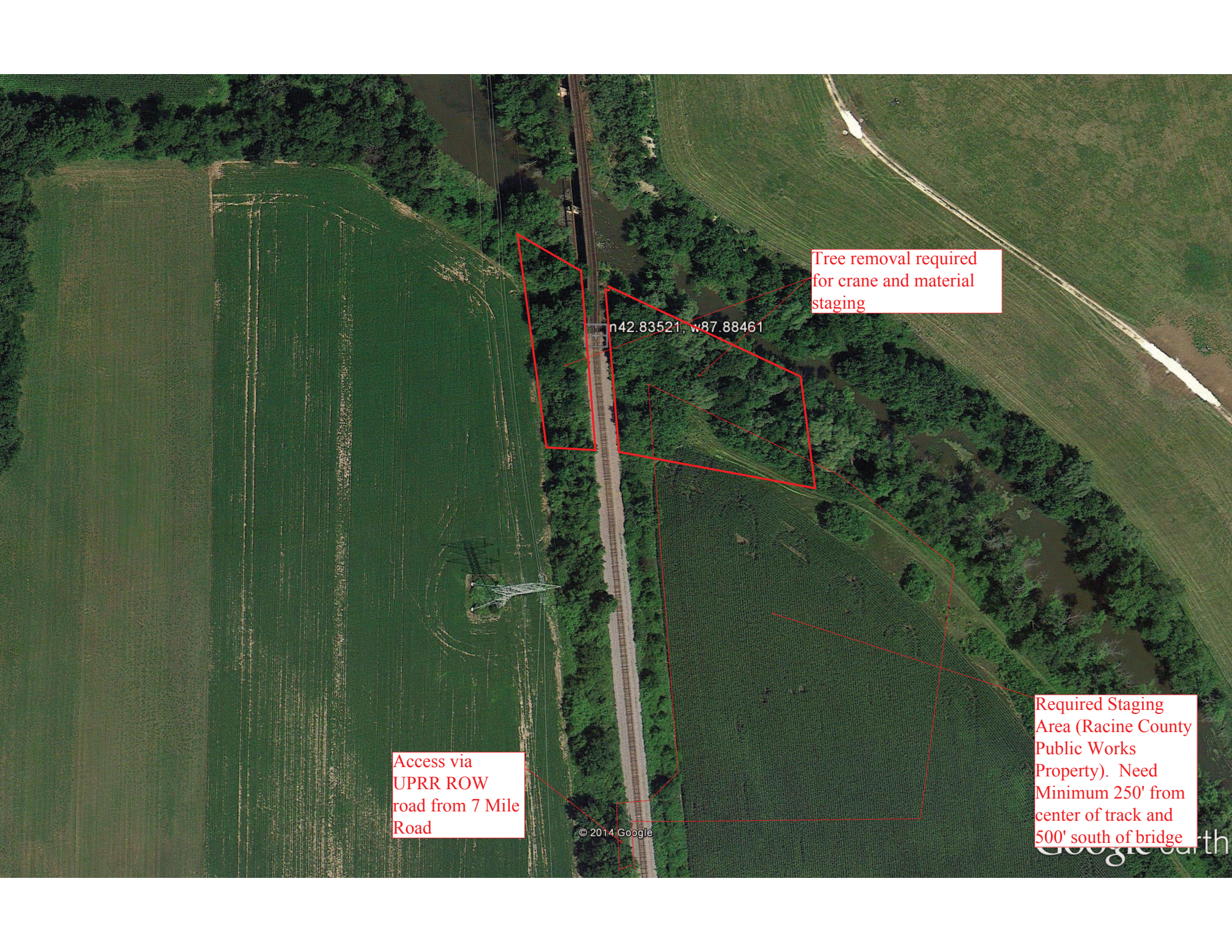
7 could have reasonably been expected from farming the land impacted by Union Pacific's

8 construction activities each year. The lease credit formula will be executed by way of an

9 amendment with Racine County and the Tenant and the loss of income formula will be

10 executed by way of an easement with Racine County and Union Pacific Railroad

11 Company, a draft of which is set forth in Exhibit "B".



Tree removal required for crane and material staging

n42.83521, w87.88461

Access via UPRR ROW road from 7 Mile Road

Required Staging Area (Racine County Public Works Property). Need Minimum 250' from center of track and 500' south of bridge

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Google Earth

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT is made by and between RACINE COUNTY, WISCONSIN (the "Grantor"), with an address of 730 Wisconsin Avenue, 10th Floor, Racine, Wisconsin 53403, and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Grantee"), with an address of 1400 Douglas St., STOP 1690, Omaha, Nebraska 68179.

WHEREAS, the Grantor is the owner of certain premises located in Racine County, Wisconsin, parcel identification number 104042203024000, (the "Premises").

WHEREAS, Grantee desires to access certain portions of the Premises to facilitate construction of culvert and bridge repair.

NOW THEREFORE, for good and valuable consideration to be paid by the Grantee to the Grantor, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Conditioned upon the issuance and execution of all necessary local and state permits to Grantee for the construction of culvert and bridge repair, Grantor does hereby GRANT, CONVEY and CONFIRM unto the Grantee, its successors and assigns, a TEMPORARY CONSTRUCTION EASEMENT in, to, over, along, upon and across an approximately 2.8 acre area, extending from the Root River bank southerly approximately 500', and from the railroad track centerline easterly approximately 250', within the Premises, as more particularly described and shown by the red outline areas on **Exhibit A**, attached hereto and made a part hereof (the "Construction Area").

2. This Temporary Construction Easement is to be used by the Grantee and its employees, agents, contractors and permittees (collectively, the "Grantee's Representatives"), for construction of culvert and bridge repair. The Grantor also hereby grants unto the Grantee and Grantee's Representatives, the right of ingress and egress to and from the Construction Area for the purpose of exercising the rights herein granted, provided that such ingress and egress not cover such portions of the Premises outside the Construction Area otherwise utilized for farming purposes.

3. Grantee shall use and cause Grantee's Representatives to use reasonable efforts to avoid disruption of Grantor's activities including disruption of the access or activities of Grantor, its employees, agents, and tenants (collectively, the "Grantor Parties") at the Premises.

4. Nothing contained herein shall be deemed or construed to in any way prohibit, limit, restrict, or interfere with the absolute right of Grantor to use and occupy

the Premises, and Grantor hereby retains, reserves, and shall continue to enjoy all rights of ownership and use in and to the Premises.

5. The Temporary Construction Easement granted herein shall commence on the date of this instrument and continue until the Grantee has completed its construction activities described herein (the "Construction Period") and restoration as described herein. The Grantee estimates that it will complete its construction activities by February 28, 2015. In the event Grantee does not complete its construction activities and restoration by November 15, 2015, this Temporary Construction Easement shall be amended

6. By its acceptance of this instrument, the Grantee agrees to indemnify and hold harmless the Grantor and Grantor Parties from and against any and all liabilities, losses, damages, costs, expenses, and claims for damages, suits, proceedings, recoveries, judgments, executions, loss of insurance proceeds, costs, penalties, fines, and consequences (including, but not limited to, litigation costs and expenses and reasonable attorneys' fees, as well as costs, expenses and fees as may be incurred by Grantor and Grantor Parties in establishing and enforcing its right to indemnification hereunder) which may result arising from or related to any activities or omissions of Grantee or Grantee's Representatives, except to the extent that the loss is caused by the negligence of the Grantor, including, but not limited to, (i) injury to or death of persons or loss of or damage to property when such loss is due to or arises in connection with or as a result of Grantee's use of the Construction Area during the Construction Period; (ii) any non-compliance with, or violations of, laws and regulations by Grantee or Grantee's Representatives; (iii) environmental claims; (iv) the introduction by Grantee or Grantee's Representatives of hazardous substances on, above or below the Premises or the aggravation of existing contamination to the extent caused in whole or in part by Grantee or Grantee's Representatives; or (v) direct or indirect damages due to the breach of this Temporary Construction Easement. The provisions of this paragraph shall survive the expiration or earlier termination of this Temporary Construction Easement.

7. Grantee shall promptly restore the Construction Area and any other portions of the Premises accessed for the purpose of exercising the rights herein granted to the same or better condition it was in immediately prior to performing construction activities and shall promptly repair at its own cost any damage to the Premises caused by Grantee or Grantee's Representatives. In the event that environmental conditions prevent a full restoration at the completion of construction activities, full restoration will be completed no later than November 15, 2015. The Grantor and Grantor Parties may survey or cause the Grantee to survey the Premises immediately prior to performing any construction activities and immediately after the conclusion of the construction activities to ensure the restoration is done in compliance with this paragraph. The Grantor shall have the authority to reasonably determine whether the restoration work has been done to the satisfaction of this condition and may reasonably direct Grantee to perform additional work to restore the Premises to the same condition it was in immediately prior to performing construction activities. The Grantor shall in no way use this discretion to direct restoration work to be performed which would constitute an improvement on the

Premises above and beyond the condition it was in immediately prior to the performance of construction activities. The provisions of this paragraph shall survive the expiration or earlier termination of this Temporary Construction Easement. Any inspection or other services provided by the Grantor to ensure Grantee's compliance with this paragraph will be at Grantee's expense, and Grantor may issue to Grantee invoices for the reasonable cost of inspections or other services to ensure compliance. Grantee shall obtain and provide a bond to Grantor to cover the obligations of this paragraph.

8. Grantee shall maintain at its own expense and provide Grantor with Certificates of Insurance that provide the following coverage:

- a. Maintain worker's compensation insurance as required by Wisconsin Statutes, for all individuals engaged in work under this Temporary Construction Easement;
- b. Maintain general liability coverage including personal injury and property damage against any claim (s), which might occur in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for each occurrence for bodily injury and property damage including product liability and completed operations and three million dollars (\$3,000,000) in the aggregate. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) for each occurrence combined single limit for automobile liability and property damage and three million dollars (\$3,000,000) in the aggregate.
- c. Grantor shall be named as additional insureds on Grantee's general liability insurance policy for actions and/or omissions performed pursuant to this Temporary Construction Easement. All coverage enumerated above must be placed with an insurance carrier with an AM Best Rating of A- VIII or greater. Grantor shall receive a 30-day written notice of cancellation of any policy. A copy of Certificate of Insurance and the referenced policies shall be mailed to Grantor within 60 days of the beginning of this Temporary Construction Easement.

9. This Temporary Construction Easement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Wisconsin without giving effect to its conflict of law provisions.

10. This Temporary Construction Easement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other writing or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose. This Temporary Construction Easement may not be changed or

modified, nor any provision hereof waived, except in writing by the party to be charged thereby.

11. This Temporary Construction Easement shall be construed as a whole and in accordance with the fair meaning of its language, and shall not be construed for or against either party. If any term, covenant, condition or provision of this Temporary Construction Easement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision shall be replaced by the parties hereby with a valid and enforceable provision which most closely reflects the intent of such parties.

12. In the event that any action or proceeding is commenced to obtain a declaration of rights hereunder or to enforce any provision hereof, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein.

13. The failure of Grantor to insist upon the performance of any of the terms and conditions of this Temporary Construction Easement, or the waiver by Grantor of its rights to enforce this agreement in the event of any breach thereof, shall not be construed as thereafter waiving such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

14. TO HAVE AND TO HOLD the Construction Area unto the Grantee and Grantee's Representatives for a Temporary Construction Easement, and the Grantor, for itself and its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that it is lawfully seized of the Construction Area, that the Construction Area is free from encumbrances, it has the good right and lawful authority to grant this Temporary Construction Easement, and that it and its successors and assigns, shall warrant and defend the same unto the Grantee, its successors and assigns during the term of this Temporary Construction Easement, against the lawful claims of all persons whomsoever.

15. In consideration of this Temporary Construction Easement, the Grantee shall pay the Grantor (within fourteen business days of the Grantor's full execution of this Temporary Construction Easement) a one-time lump sum payment in the total amount of **Twelve Thousand Two Hundred Fifty Dollars and no/100 (\$12,500.00)**.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this instrument as of the ____ day of _____, 2014.

GRANTOR

RACINE COUNTY

By: _____

By: _____

By: _____

GRANTEE

UNION PACIFIC RAILROAD COMPANY

Mark Jensen
Senior Manager - Acquisitions