

RESOLUTION NO. 2012-63

JOINT RESOLUTION BY THE EXECUTIVE COMMITTEE AND FINANCE AND HUMAN RESOURCES COMMITTEE AUTHORIZING RACINE COUNTY TO MAKE AN INVESTMENT OF AN ADDITIONAL \$50,000.00 FOR THE PURPOSE OF A LOAN TO THE RACINE COUNTY DRAINAGE DISTRICT – NORWAY/DOVER DISTRICT TO PAY FOR MISCELLANEOUS EXPENSES NECESSARY TO COMPLETE THE NORWAY/DOVER DRAINAGE DISTRICT ANNEXATION AND ASSESSMENT PROCEDURES AND EXTEND THE DUE DATE OF THE TERM LOAN AGREEMENT AND BUSINESS NOTE DATED 9 NOVEMBER 2009 AS PREVIOUSLY AUTHORIZED BY RESOLUTION NO. 2009-64 FROM 1 NOVEMBER 2012 TO 1 APRIL 2013

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

BE IT RESOLVED by the Racine County Board of Supervisors that an extension until 1 April 2013 of the due date for the Term Loan Agreement, marked as "Exhibit A," that is attached hereto, previously authorized and approved pursuant to Resolution 2009-64, in the amount of \$300,000, is authorized and approved. The amendment to the Term Loan Agreement is attached as "Exhibit B."

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that an additional loan of \$50,000.00 to the Racine County Drainage District – Norway/Dover District under all of the same terms and conditions previously authorized for the Term Loan Agreement referenced above, that is marked as "Exhibit C" and attached hereto, is authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Clerk, the County Executive and/or the County Board Chairman are authorized to execute any contracts, agreements or any other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

EXECUTIVE COMMITTEE

1st Reading _____

2nd Reading _____

Peter L. Hansen, Chairman

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

Russell A. Clark, Vice Chairman

Robert N. Miller, Secretary

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Mark M. Gleason

Katherine Buske

Ronald Molnar

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5 _____
6 Kenneth Hall

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8 _____
9 Q.A. Shakoor, II

10
11 _____
12 Pamela Zenner-Richards

13
14 **FINANCE AND HUMAN RESOURCES**
15 **COMMITTEE**

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17 _____
18 Robert N. Miller, Chairman

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20 _____
21 Q.A. Shakoor, II, Vice-Chairman

22
23 _____
24 Thomas Pringle, Secretary

25
26 _____
27 Donnie Snow

28
29 _____
30 Gilbert Bakke

31
32 _____
33 John A. Wisch

34
35 _____
36 Jeff Halbach

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39 **INFORMATION ONLY**

40
41 **WHEREAS**, The Racine County Drainage District – Norway/Dover District is
42 responsible for the supervision and administration under Chapter 88 of Wisconsin State
43 Statutes of the parcels currently making up the Norway/Dover Drainage District; and

44
45 **WHEREAS**. RCDD promises to pay to Racine County the principal sum of Three
46 Hundred Thousand Dollars (\$ 300,000.00) along with the additional Fifty Thousand Dollars
47 (\$50,000.00) on 1 April 2013, plus interest; and

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5 **WHEREAS**, the loan bears interest on the unpaid principal balance before maturity at
6 the rate of 1.5% per annum. Interest shall be calculated on a 360 day year consisting of
7 twelve 30 day months. Interest is due and payable on December 31, 2012 and at maturity;
8 and

9

10 **WHEREAS**, the goal of this investment is to ensure that the RCDD is able to execute
11 their plan to annex new parcels within the district and assess the newly annexed district
12 pursuant to statutory guidelines.

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TERM LOAN AGREEMENT

This TERM LOAN AGREEMENT ("Agreement") is by and between RACINE COUNTY BOARD OF DRAINAGE COMMISSIONERS ("RCBDC") and RACINE COUNTY ("RC").

RCBDC and RC wish to enter into a lender/borrower relationship; they do so in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RCBDC and RC agree as follows:

1. Term Loan. RCBDC requests RC to make a term loan to RCBDC, and RC agrees to lend \$ 300,000.00 (Three Hundred Thousand Dollars and no/100) as a term loan (the "Loan") to RCBDC. The Loan shall be evidenced by and payable to in accordance with the Term Business Note in the form of Exhibit 1 and any renewals, extensions or modifications thereof. Amount advanced to RCBDC under the Loan and repaid to RC may not be reborrowed by RCBDC under this Agreement.

2. Condition for Loan. RC'S obligation to make the Loan is subject to satisfaction of the condition that RC shall have received the Term Note properly executed by RCBDC.

3. Representations. RCBDC represents and warrants to RC that:

a) Purpose of Loan. The Loan funds will be used for preparation of the specifications for the Norway/Dover Drainage District as mandated under Wis. Admin. Code §ATCP 48.20 and for one or more of the following purposes:

(i) Annual Maintenance and brush/tree eradication - est \$45,000;

(ii) Engineering and Surveyor costs – est. \$80,000;

(iii) Outstanding accounts payable – est. \$56,000;

(iv) Administrative Costs/Fees including: mapping, publication, and notices, insurance, legal costs, commissioner compensation, copy expenses. – est. \$76,000;

(v) Inflation adjustments – est. \$10,000

(vi) Construction/maintenance contingency – est. \$33,000

b) Conditions. RCBDC agrees to comply with the following conditions:

(i) In addition to its obligations under §88.62, Wisconsin Statutes, RCBDC shall engage in a competitive procurement process in the manner set out in Chapter 7,

total unpaid balance of the Loan shall automatically become due and payable in the event RCBDC becomes the subject of bankruptcy or other insolvency proceedings. RC may waive any default without waiving any other subsequent or prior default. RCBDC agrees to pay all costs of collection before and after judgment, including reasonable attorneys' fees and legal expenses.

6. Amendment. No amendment, modification, termination or waiver of any provision of this Agreement, nor consent to any departure by RCBDC from any provision of this Agreement shall in any event be effective unless it is in writing and signed by RC, and then such waiver or consent shall be effective only in the specific instance and for the specific purposes for which given.

7. Entire Agreement. This Agreement, including the Exhibits attached to it and any Note evidencing a Loan, is intended by RCBDC and RC as a final expression of this Agreement and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Agreement except as set forth in this Agreement.

8. No Waiver; Remedies. No failure on the part of RC to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of the right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

9. Address. RCBDC's address and facsimile number are shown below. RCBDC shall notify RC in writing of any change of address.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of RC and RCBDC and their respective heirs, personal representatives, successors and assigns except that RCBDC may not assign or transfer any of RCBDC's rights under this Agreement without the prior written consent of RC.

11. Interpretation. The validity, construction and enforcement of this Agreement are governed by the internal laws of Wisconsin. Invalidity of any provision of this Agreement shall not affect the validity of any other provisions of this Agreement.

Dated as of November 2, 2009.

LENDER:
RACINE COUNTY

BORROWER:
RACINE COUNTY BOARD
OF DRAINAGE
COMMISSIONERS

By: William L. McReynolds
Its: WILLIAM L. McREYNOLDS
RACINE COUNTY EXECUTIVE

By: Alvin R. Wilks
Alvin R. Wilks, Chairman

Attest: Alan Jaspersen
Alan Jaspersen, Secretary

REVIEWED BY FINANCE DIRECTOR
Sign [Signature]
Date 11/2/09

Date 11.2.09
Certified to be correct as to form.
By [Signature]
Racine County Commission Council

Wendy M. Christensen
Wendy M. Christensen
Racine County Clerk 11/2/09

**AMENDMENT TO THE
TERM LOAN AGREEMENT and the TERM BUSINESS NOTE**

This Amendment effective October 10, 2012 ("Effective Date") is made to the Term Loan Agreement and Term Business Note ("Agreement"), effective November 1, 2009 by and between Racine County Board of Drainage Commissioners ("RCBDC") and Racine County (the "County").

WHEREAS, County effective October 10, 2012 has agreed to extend the due date of the Agreement referenced above to April 1, 2013; and

WHEREAS, the parties wish to amend the Agreement as set forth below.

NOW, THEREFORE, the parties hereto agree as follows:

1. Paragraph 1 of the Term Business Note shall be deleted in its entirety and replaced with the following:

Racine County Board of Drainage Commissioners ("Maker") promises to pay to Racine County ("Lender") the principal sum of Three Hundred Thousand Dollars (\$ 300,000.00) on April 1st, 2013, plus interest as set forth below.

All other terms and conditions of the Agreement shall remain unchanged:

Racine County Board of Drainage Commissioners

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Racine County

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

TERM LOAN AGREEMENT

This TERM LOAN AGREEMENT ("Agreement") is by and between RACINE COUNTY BOARD OF DRAINAGE COMMISSIONERS ("RCBDC") and RACINE COUNTY ("RC").

RCBDC and RC wish to enter into a lender/borrower relationship; they do so in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RCBDC and RC agree as follows:

1. Term Loan. RCBDC requests RC to make a term loan to RCBDC, and RC agrees to lend \$ 50,000.00 (Fifty Thousand Dollars and no/100) as a term loan (the "Loan") to RCBDC. The Loan shall be evidenced by and payable to in accordance with the Term Business Note in the form of Exhibit 1 and any renewals, extensions or modifications thereof. Amount advanced to RCBDC under the Loan and repaid to RC may not be reborrowed by RCBDC under this Agreement.

2. Condition for Loan. RC'S obligation to make the Loan is subject to satisfaction of the condition that RC shall have received the Term Note properly executed by RCBDC.

3. Representations. RCBDC represents and warrants to RC that:

a) Purpose of Loan. The Loan funds will be used for continued operation and administration of RCBDC.

b) Conditions. RCBDC agrees to comply with the following conditions:

- (i) In addition to its obligations under §88.62, Wisconsin Statutes, RCBDC shall engage in a competitive procurement process in the manner set out in Chapter 7, Article VIII of the Racine County Code of Ordinances for all engineering and construction work performed under the scope of this agreement and in furtherance of its compliance with §ATCP 48.20; and
- (ii) RCBDC shall provide RC with quarterly financial reports beginning with the 4th Quarter 2013 report, due within 30 days after the end of each quarter; and
- (iii) RCBDC will not expend any money whatever from this loan toward future legal fees that relate in any way to litigation the RCBDC is a plaintiff and either RC, Town of Norway, Town of Dover and/or the Wind Lake Management District is a defendant.

c) Authority. The execution and delivery of this Agreement and the Note and the performance by RCBDC of its obligations under this Agreement and the Note are within its power, have been duly authorized by proper action on the part of RCBDC, are not in violation of any existing law, rule or regulation, any order or decision of any

court, the Articles of Incorporation, Bylaws or other governing documents of RCBDC, as applicable, or the terms of any agreement or restriction to which RCBDC is a party or by which it is bound, and do not require the approval or consent of any person or entity. This Agreement, the Note and all documents delivered by RCBDC hereunder, when executed and delivered, will constitute the valid and binding obligations of RCBDC enforceable in accordance with their terms.

- d) Organization. RCBDC is a corporation validly existing and in good standing under the laws of the State of Wisconsin.
4. Principal and Interest. RCBDC agrees to pay interest and repay principal to RC on the unpaid principal balance of the Loan in accordance with the Note. Principal may be prepaid at any time, without penalty.
5. Default and Acceleration. Upon the occurrence of any one or more of the following Events of Default:
 - a) RCBDC fails to pay any amount when due under this Agreement of the Note;
 - b) Any representation or warranty made under this Agreement or information provided by RCBDC in connection with this Agreement is or was false or fraudulent in any material respect; or
 - c) RCBDC fails to timely observe or perform any of the covenants or duties contained in this Agreement or in the Note;

Then, at RC'S option, and upon notice to RCBDC, the total unpaid balance of the Loan shall become immediately due and payable without presentment, demand, protest, or further notice of any kind, all which are hereby expressly waived by RCBDC. The total unpaid balance of the Loan shall automatically become due and payable in the event RCBDC becomes the subject of bankruptcy or other insolvency proceedings. RC may waive any default without waiving any other subsequent or prior default. RCBDC agrees to pay all costs of collection before and after judgment, including reasonable attorneys' fees and legal expenses.

6. Amendment. No amendment, modification, termination or waiver of any provision of this Agreement, nor consent to any departure by RCBDC from any provision of this Agreement shall in any event be effective unless it is in writing and signed by RC, and then such waiver or consent shall be effective only in the specific instance and for the specific purposes for which given.

7. Entire Agreement. This Agreement, including the Exhibits attached to it and any Note evidencing a Loan, is intended by RCBDC and RC as a final expression of this Agreement and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Agreement except as set forth in this Agreement.

8. No Waiver; Remedies. No failure on the part of RC to exercise, and no

delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of the right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

9. Address. RCBDC's address and facsimile number are shown below. RCBDC shall notify RC in writing of any change of address.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of RC and RCBDC and their respective heirs, personal representatives, successors and assigns except that RCBDC may not assign or transfer any of RCBDC's rights under this Agreement without the prior written consent of RC.

11. Interpretation. The validity, construction and enforcement of this Agreement are governed by the internal laws of Wisconsin. Invalidation of any provision of this Agreement shall not affect the validity of any other provisions of this Agreement.

Dated as of October ____, 2012.

LENDER:
RACINE COUNTY

BORROWER:
RACINE COUNTY BOARD
OF DRAINAGE
COMMISSIONERS

By: _____

By: _____

Its: _____

Its: _____

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Exhibit 1: Term Note

TERM BUSINESS NOTE

October 15, 2012

\$ 50,000.00

Racine County Board of Drainage Commissioners ("Maker") promises to pay to Racine County ("Lender") the principal sum of Fifty Thousand Dollars (\$50,000.00) on April 1, 2013, plus interest as set forth below.

This Note bears interest on the unpaid principal balance before maturity at the rate of 1.5 % per annum. Interest shall be calculated on a 360 day year consisting of twelve 30 day months. Interest is due and payable on December 31, 2012 and at maturity. All unpaid principal and accrued interest bear interest after maturity, whether occurring by acceleration or lapse of time, until paid, at the rate of 1.5 %.

Full or partial prepayment of this Note is permitted at any time without penalty.

If Maker fails to make a payment under this Note when due, or upon the occurrence of an event of default described in the Loan Agreement governing this Note, Lender may declare the entire balance of principal and accrued interest to be payable immediately, without notice or demand.

Presentment, protest, demand and notice of dishonor are waived. Lender may, without notice, grant renewals or extensions, accept partial payments, release or impair any collateral security for the payment of this Note or agree not to sue any party liable on it. Maker agrees to pay all costs of collection before and after judgment, including reasonable attorneys' fees.

This Note may not be supplemented or modified except in writing. This Note benefits Lender, its successors and assigns, and binds Maker and its successors and assigns.

**RACINE COUNTY BOARD OF
DRAINAGE COMMISSIONERS**

By: _____
Alvin R. Wilks, Chairman

Attested to by:

Alan Jasperson, Secretary