

RESOLUTION NO. 2009-64

JOINT RESOLUTION BY THE EXECUTIVE COMMITTEE, FINANCE AND HUMAN RESOURCES COMMITTEE AND ECONOMIC DEVELOPMENT AND LAND USE PLANNING COMMITTEE AUTHORIZING RACINE COUNTY TO MAKE AN INVESTMENT OF UP TO \$300,000.00 FOR THE PURPOSE OF A LOAN TO THE RACINE COUNTY DRAINAGE DISTRICT – NORWAY/DOVER DISTRICT TO PAY FOR THE ENGINEERING, ADMINISTRATION AND CONSTRUCTION REQUIRED TO SATISFY THE NORWAY/DOVER DRAINAGE DISTRICT SPECIFICATIONS OBLIGATION UNDER WIS. ADMIN. CODE §ATCP 48.20

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

BE IT RESOLVED by the Racine County Board of Supervisors that an investment in the amount of \$300,000 to the Racine County Drainage District – Norway/Dover District (“RCDD”) pursuant to the terms and conditions set out in the Term Loan Agreement marked as “Exhibit A,” that is attached hereto and incorporated herein, 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,

1st Reading _____

EXECUTIVE COMMITTEE

2nd Reading _____

Peter L. Hansen, Chairman

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

Robert N. Miller, Vice-Chairman

Karen A. Nelson, Secretary

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Joseph F. Bellante, Jr.

Robert D. Grove

Jeff Halbach

Michael J. Miklasevich

Dan F. Sharkozy

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Van H. Wanggaard

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Pamela Zenner-Richards

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12 **FINANCE AND HUMAN RESOURCES**
13 **COMMITTEE**

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Karen A. Nelson, Chairman

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Robert N. Miller, Vice-Chairman

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Thomas Pringle, Secretary

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Russell A. Clark

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Q. A. Shakoor, II

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Van H. Wanggaard

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Pamela Zenner-Richards

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37 **ECONOMIC DEVELOPMENT AND LAND USE**
38 **PLANNING COMMITTEE**

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41 _____
Robert D. Grove, Chairman

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44 _____
Mark M. Gleason, Vice Chairman

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47 _____
Dan F. Sharkozy, Secretary

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Kenneth Hall

Thomas Pringle

Q. A. Shakoor, II

John A. Wisch

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

Approved: _____

Vetoed: _____

Date: _____,

William L. McReynolds, County Executive

INFORMATION ONLY

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

WHEREAS. RCDD promises to pay to Racine County the principal sum of Three Hundred Thousand Dollars (\$ 300,000.00) on September 1st, 2011, plus interest; and

WHEREAS, the loan 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, 2009 and on the same dates of each consecutive year thereafter, and at maturity; and

WHEREAS, the goal of this investment is to encourage the RCDD to satisfy their statutory obligation under Wis. Admin. Code §ATCP 48.20 to adopt the “specifications” that relate to the Norway/Dover Drainage District and that shall first be presented to the Department of Agriculture, Trade and Consumer Protection for their approval.

Exhibit "A"

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. \$30,000

- b) Conditions. RCBDC agrees to comply with the formal bid process for all engineering and construction work performed under the scope of this agreement and RC will assist RCBDC with bid processes in a manner set out in Chapter 7, Article VIII of the Racine County Code of Ordinances. RCBDC further agrees to provide RC with any district accounting and budget documentation in an expedient timeframe upon the request of RC. In addition, RCBDC agrees that they will not expend any money whatever from this loan toward future legal fees that relate in anyway to litigation that RC and/or the Wind Lake Management District is a party.
 - 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 September _____, 2009.

LENDER:

RACINE COUNTY

By: _____

Its: _____

CUSTOMER:

RACINE COUNTY BOARD
OF DRAINAGE
COMMISSIONERS

By: _____

Its: _____

Exhibit 1: Term Note

TERM BUSINESS NOTE

September 3, 2009

\$ 300,000.00

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 September 1st, 2011, 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, 2009 and on the same date of each consecutive year thereafter, 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: _____

Its: _____