

## PHOSPHORUS CREDIT PURCHASE AGREEMENT

THIS AGREEMENT is entered into effective as of the last date of signature below, by and between the Village of Loganville (the "Village"), and Sauk County (the "Property Owner").

WHEREAS, the Village operates a sewerage treatment facility located in Town of Westfield, Sauk County, Wisconsin, pursuant to a Wisconsin Pollutant Discharge Elimination System ("WPDES") permit issued by the Wisconsin Department of Natural Resources ("DNR"), which discharges into Narrows Creek.

WHEREAS, the Property Owner owns real property located at S4555 County Rd CH Reedsburg, Wisconsin 53959, through which a tributary to Narrows Creek flows ("the Property").

WHEREAS, the Property Owner intends to undertake certain stream bank stabilization work ("the Project") on the Property in accordance with improvement plans designed by the Sauk County Land Resources and Environment Department. The Project will be completed in two phases with phase 1 attached as Exhibit A and phase 2 being designed and approved in Winter 2022 for future inclusion into this agreement.

WHEREAS, the Sauk County Land Resources and Environment Department calculates, upon completion of the Project, the amount of phosphorus entering the tributary to Narrows Creek will be reduced by an estimated 266 pounds per year with a 2:1 trade ratio equating to 133 pounds per year.

WHEREAS, pursuant to its WPDES permit, the Village is subject to certain requirements to reduce phosphorus water quality-based effluent levels.

WHEREAS, the Village is willing to reimburse the Property Owner for a portion of the cost of the Project in order for it to receive credit from the DNR for the phosphorus reduction the Project is calculated to produce.

WHEREAS, the Property Owner is willing to undertake the Project if the Village is willing to incur a portion of the cost of the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. **Project.** The Property Owner shall provide complete plans for the Project to the Village for review and approval, which shall not be unreasonably refused or delayed. Upon approval by the Village, the Property Owner shall bid the Project. Upon receipt of all bids, the Property Owner shall provide copies of all bids to the Village. The Property Owner shall award the bid to the lowest responsible bidder with the approval of the Village. The Property Owner shall not undertake the Project until the plans and bid award have been approved by the Village. If either the plans or bid award are not so approved and the parties cannot reach agreement on same, this Agreement shall terminate and neither party shall have any further obligation to the other. Upon such approval the Property Owner shall commence the Project and diligently proceed with construction until full completion. The Project shall be constructed in compliance with the approved plans. Upon at least twenty-four (24) hours prior notice to the Property Owner, except

in an emergency for which reasonable notice shall be required, the Property Owner shall permit Village representatives to enter upon the Property at any time to inspect the construction of the Project and verify its completion.

2. **Cost Reimbursement.** Upon full completion of the Project, the Village shall reimburse the Property Owner for 50% of the paid costs of the Project, up to \$76,765, subject to review and approval of the invoices by the Village, which shall not be unreasonably withheld or delayed. The Village shall pay the Property Owner said amount within thirty (30) days after receipt of the following documentation, in a form reasonably acceptable to the Village, verifying the following:
  - a. Full completion of the Project;
  - b. The amount of, and purpose for, all costs incurred in the construction of the Project; and
  - c. Payment in full of all such costs.
3. **Phosphorus Credit.** The Village shall receive credit from the DNR for the phosphorus reduction the Project is calculated to produce. The Property Owner shall assign all right and interest in said credit to the Village for the term of this Agreement and any extensions thereto. The Village shall apply to the DNR for credit toward the Village's phosphorus water quality levels. The Property Owner shall cooperate with the Village in making such application(s) and provide to the Village any documents concerning the Project and credit assignment which the Village may reasonably require. Upon completion of the Project according to the documentation prepared by Sauk County, the proposed improvements are calculated to result in a reduction of an estimated 266 pounds per year with a 2:1 trade ratio equating to 133 pounds of phosphorus annually from the Narrows Creek watershed and shall provide credit toward the Village's phosphorus reduction goals.
4. **Maintenance.** The Property Owner shall enter into an Operation and Maintenance Plan agreement, in a form set forth in Exhibit B, concurrently with the execution of this Agreement and maintain the improvements constructed as part of the Project as required by the Operation and Maintenance Plan agreement and the DNR. Upon at least twenty-four (24) hours prior notice to the Property Owner, except in an emergency for which reasonable notice shall be required, the Property Owner shall permit Village representatives to enter upon the Property at any time to inspect the improvements and verify said maintenance obligations are fulfilled. If the Property Owner fails to fulfill said maintenance obligations, the Village shall provide notice to the Property Owner, and the Property Owner shall cure all maintenance deficiencies within thirty (30) days of said notice. If the Property Owner shall fail to so cure, the Village may, but shall not be obligated to, cure all maintenance deficiencies. The Property Owner hereby grants the Village representatives, and their agents and contractors, the right to enter upon the Property at any time to cure such deficiencies. In the event it is necessary for the Village to cure such deficiencies, the term of this Agreement shall be extended based on the cost incurred by the Village in accordance with section 5 below.
5. **Term.** The term of this Agreement shall commence on the Effective Date and expire twenty (20) years following the Village's receipt of credit from the DNR for the phosphorus reduction the Project produces, unless otherwise extended or terminated as provided herein. The Village may terminate this Agreement at any time and for any reason, or no reason, upon notice to the Property Owner. If the Village cures maintenance deficiencies pursuant to section 3 above, the term of this Agreement shall automatically be extended one (1) year for each \$

the Village so expends, without any proration. Upon making such expenditures, the Village shall provide written notice to the Property Owner providing documentation as to the amount and purpose of such expenditures and stating the date of the extended expiration date.

6. **Notices.** It is hereby agreed that for all purposes hereunder, notices to the parties shall be given to the parties in writing at the following address:

If to the Property Owner:                      Sauk County Land Resources and Environment  
Attn: Lisa Wilson  
505 Broadway  
Baraboo, WI 53913

If to the Village:                                      Village of Loganville  
Attn: Village President  
130 West St  
Loganville, WI 53943

7. **Compliance With Laws and Regulations.** The Property Owner shall construct the Project and maintain the improvements so constructed in compliance with all applicable laws and regulations.
8. **Construction/Venue.** It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin. Any action arising from this Agreement shall be venued in the circuit court for Sauk County, Wisconsin.
9. **Waiver.** A waiver by either party of any breach of any covenant or duty of the other party under this Agreement is not a waiver of a breach or any other covenant or duty of the other party or any subsequent breach of the same covenant or duty.
10. **Validity.** The invalidity of any provision of this Agreement shall not be deemed to affect the validity of any of the other provisions. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties after the expungement of the invalid provision.
11. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties hereto. Any prior understanding or representation of any kind preceding the date of this Agreement shall be non-binding upon either party, except to the extent incorporated in this Agreement.
12. **Amendment.** Any amendment of this Agreement shall only be accomplished by a writing to that effect, executed by both parties hereto.
13. **Assignment.** The Property Owner may not assign this Agreement without the prior written consent of the Village. The Village may assign this Agreement freely upon notice to the Property Owner.
14. **Indemnification.** Each party agrees to hold the other harmless and keep the other free, during the term of this Agreement and all extensions or renewal thereof, from any and all liability and

claims of damages arising out of injury to any person or persons or property whomsoever and whatsoever, arising out of or in any way related to the acts or omissions of the indemnifying party under this Agreement.

15. **Binding Effect.** The terms, covenants and conditions of this Agreement shall run with the land and be binding upon the successors and assigns of the parties hereto. The Village may record a copy of this Agreement, or a memorandum thereof, in the Office of the Register of Deeds.

16. **No Partnership.** Nothing in this Agreement shall be construed to create any co-partnership, principal and agent, joint venture, or other similar relationship between the parties hereto and neither party may incur debts or liabilities in the name, or on behalf, of the other unless expressly approved by the party to be bound thereby in a written instrument signed by such party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the last date of signature below.

FOR SAUK COUNTY:

\_\_\_\_\_  
Brent Miller, Administrator

\_\_\_\_\_  
Date

FOR VILLAGE OF LOGANVILLE

\_\_\_\_\_  
Russ Lankey, President

\_\_\_\_\_  
Date