

THIS GRANT OF A TRAIL RIGHT OF WAY EASEMENT is made as of this _____, day of _____, 2019, by Milwaukee County, a Municipal Body Corporate duly organized and existing under and by virtue of the laws of the State of Wisconsin, ("Grantor"), and the Department of Natural Resources, (Grantee), as a holder of an easement pursuant to the provisions of ss. 23.09(2)(d), 23.09(10) and 23.175, Wisconsin Statutes.

DRAFT

WITNESS THAT:

WHEREAS, the Grantor is the sole owner in fee simple of certain real property in the City of Wauwatosa, Milwaukee County, Wisconsin, more particularly described on Exhibit A, said property hereinafter referred to as the "Property";

WHEREAS, the Grantee desires and intends to locate, construct, maintain, improve, repair and replace two non-motorized trails right-of-way, (hereinafter referred to as "Trails"), for use by the public over and across the Property and to permit the maintenance, repair, improvement, replacement and removal of the Trail by the Grantee;

WHEREAS, the Trails is intended to enhance recreational opportunities for the general public; and

WHEREAS, this "Grant of a Trail Right-of-Way Easement" to the Grantee was approved by the Milwaukee County Board by Resolution File No. _____, on _____ 2019;

NOW, THEREFORE, for and in consideration of the foregoing Recitals and the following terms and conditions, the Grantor and Grantee agree as follows:

I. Rights of the Grantee (DNR):

1. Construction, Maintenance and Enforcement of Trail Easement Area

(a) The right to establish two universally accessible Trails across, over, and through the Property at locations to be determined by Grantor and the Grantee, and the right to permit use of the Trails by the general public. Said use shall be limited to non-motorized access by foot, snowshoe, ski, wheelchair or other compatible means over and across the Property; motorized wheelchairs are exempted from this provision. Dogs on leashes are permitted on the Property. Special events such an annual snowmobile ride for persons with disabilities, in compliance with Grantor's ordinances, may be authorized and approved in writing by the Grantor and the Grantee.

(b) Subject to the General Provisions in Section III, the right to lay out, construct, develop, operate, maintain, identify, bridge, repair, remove or relocate a meandering Trails; to make topographical changes to the Property for the necessity and convenience of locating the Trail and to protect the Property from erosion, to post signs marking the Trails and to manage vegetation through selective planting or removal of trees or exotic, invasive or nuisance plant species, in order to maintain and enhance the scenic, natural and ecological value of the Property. The Grantee may construct "bump-outs" for users to exit the Trail for a brief rest. The Grantee may install signage at the Trail heads informing the public of the location and intended uses of the Trail.

(c) The right to inspect the Easement area and to enforce the covenants of the Grantor by any action in law or in equity. The Grantee shall not waive or forfeit its right to take legal action to enforce this Easement by any prior failure to act.

(d) The Grantor conveys to the Grantee, its employees, officers, and agents the right of ingress and egress from and to the Property across all contiguous lands owned by the Grantor for the purpose of

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Return to:

Parcel Identification Number/Tax Key Number:

constructing, developing, maintaining, managing and inspecting the trail. The Grantor may provide a designated route to and from the Property which the Grantee shall use.

(e) Grantor has no responsibilities for trail construction, maintenance, repair, relocation or inspection. Any damage to the Grantor's adjacent property caused by the construction, operation, maintenance, repair, removal and replacement of the Trail shall be repaired or replaced at the expense of the Grantee to the Grantor's satisfaction.

(f) The Grantor and the Grantee shall be responsible for enforcement.

2. Grantor's and Grantee's Rights to Suspend Trail Use

By agreement, the Grantor and the Grantee shall have the right to prohibit public access and use from time to time as deemed necessary through the installation of gates or other obstructions, and to limit access by or exclude the public by appropriate means from any portion of the Property. Motor vehicles shall be prohibited, except vehicles in use by the Grantor and the Grantee for purposes permitted by this Easement or for health and safety emergencies.

3. Easement Runs with Land; Successors and Assigns

This Easement shall bind and run with title to the Property forever, and shall inure to the benefit of Grantee and Grantee's successors and assigns. Grantee may terminate this Easement as provided under Item #6, below.

II. COVENANTS OF GRANTOR (County):

AND IN FURTHERANCE of the foregoing affirmative rights, the Grantor makes the following covenants, its successors and assigns, which shall run with and bind the Property in perpetuity:

1. The Grantee is authorized and permitted to undertake development of two Trails to meander within and across the Property for use by the general public;
2. The Property shall be used exclusively for public recreation and education.
3. The Grantor shall not conduct or allow any residential, commercial or industrial use of the Property, nor shall any right-of-way across or upon the Property be allowed or granted in conjunction with residential, commercial or industrial activity which would interfere in any manner with Grantee's uses of the Property granted by this Easement.
4. The Grantor shall not construct or place temporary or permanent buildings, advertising signs, billboards or other advertising materials or other structures upon the Property that would interfere in any manner with Grantee's uses of the Property granted by this Easement.
5. The Grantor shall not fill, excavate, mine, drill or remove topsoil, sand, gravel, rock, minerals or other materials, or make any change in the topography of the Property in any manner, which would interfere in any manner with Grantee's uses of the Property granted by this easement.
6. There shall be no dumping of trash, garbage or other unsightly or hazardous material upon or within the Property.
7. There shall be no manipulation or alteration of watercourses, wetlands or other water bodies within the Property, nor shall any activities be undertaken within the property which are detrimental to water quality;
8. The cutting of timber shall not be permitted on the Property except as follows:
 - (a) The right to clear and restore forest cover that is damaged by forces of nature.
 - (b) The right to gather and use or remove dead, diseased, dangerous or downed wood.
 - (c) The right to manage the vegetation.
 - (d)

III. GENERAL PROVISIONS

a. Construction.

- (a) Grantee shall provide written notice to the Director of Milwaukee County Parks prior to the commencement of work within the Easement Area by the Grantee. Said notice shall indicate the anticipated start date and duration of the proposed work and include; plans showing the location, type of installation, trees and shrubs within line or easement area, drawings and specifications detailing construction methodology, the erosion and sedimentation control plan and the preservation and restoration methods to be employed. These shall be reviewed and approved by the County prior to commencing any construction activities. Said approval shall not be unreasonably withheld and the review will be made in a timely fashion. Violation of the aforementioned conditions during periods of emergency shall not result in cancellation or penalty. Within 24 hours of an incident constituting an emergency, Grantee shall give notice to the Director of Milwaukee County Parks, of such emergency.
- (b) No trees, shrubs or vegetation adjacent to the easement area shall be removed, trimmed or damaged without the written permission of Milwaukee County Parks.

b. Construction or Mechanics Liens.

Grantee shall not suffer or permit any construction or mechanics' liens to be filed, or if filed, to remain uncontested, against the fee of the Premises, nor against the Grantee's interest in the Premises, by reason of work, labor services or materials supplied, or claimed to have been supplied, to the Grantee or anyone holding the Premises, or any part thereof, through or under the Grantee; and nothing contained herein shall be deemed or construed in any way as constituting the consent or request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or furnishing of any materials, for any specific improvement, alteration or repair of or to the Premises or any part thereof, nor as giving the Grantee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' or construction liens against the fee of the Premises. If any such lien is filed, the Grantee shall immediately cause the same to be discharged or released, or shall upon request provide adequate and acceptable security or bond to protect the County's interest.

c. Special Conditions.

- (a) No exterior storage of materials, equipment or vehicles is permitted on the Premises, except the temporary and orderly placement of items in conjunction with construction, maintenance, repair, replacement, or removal activities.
- (b) Any modifications to the Trails shall be subject to the written approval of the Parks Director and any other required governmental approvals.
- (c) The Grantee shall in no way encumber, or allow to be encumbered, the County's title to the Premises.
- (d) Within thirty (30) days following installation of the Trails, the Grantee shall provide the County with an as-built survey showing the actual location of the Trails. Said survey shall be accompanied by a complete and detailed inventory of the Trails and any installations.
- (e) The Grantee shall contact Diggers Hotline, the Park Maintenance Division of the Milwaukee County Department of Parks, Recreation and Culture and all applicable municipalities prior to commencing any construction to verify all pertinent easements and existing utility locations within the Easement Area. Punitive damages will be charged, if easement are not strictly adhered to, for addition personal charges and subsequent property damages.
- (f) Grantee shall secure and pay for all permits required by any governing body or agency, including but not limited to, the Milwaukee County Department of Parks, Recreation and Culture before any substantial construction, repair or maintenance work commences. All Grantee construction, operation and repairs of the facilities installed within the Easement Area shall be completed at no expense to the County.

4. Indemnification and Insurance.

- (a) Except as otherwise provided, County and Grantee shall be responsible for the consequences of their own acts or omissions and those of its employees, boards, commissions, agencies, officers and representatives and be responsible for losses, claims, liabilities, which are attributable to such acts or omissions.

(b) Grantee shall provide liability protection for its officers, employees and agents while acting within the scope of their employment. Grantee further agrees to indemnify and hold harmless the County for any and all liability, including claims, demands, losses, costs, or damages to persons or property arising out of, or in connection with, or occurring in connection with this permit, where such liability is founded upon or grow of out acts or omissions of any of Grantee's officers, employees or agents while acting within the scope of their employment, where protection is afforded by §§ 893.82 and 895.46(1), Wis. Stats.

(c) To the extent legally applicable, Grantee shall comply with all federal, state, and local environmental laws and regulations in performing work related to this Easement. Except as required in the ordinary course of its business, the Grantee shall not permit or conduct either the generation, treatment, storage, or disposal of any hazardous substance on County owned property included in the Easement Area and surrounding areas, to the extent permitted by law, will perform all remedial actions reasonably necessary as a result of its own acts which result in the presence of any hazardous substances on, at, or near, the County owned property included in the Easement Area and surrounding areas, as a result of an act or omission of the Grantee.

"Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(d) Grantee agrees to provide the other party with any notice of an environmental claim made by third parties or any governmental entity related to the Leased Premises or Facility immediately after of receipt of any such claim.

5. **Assignment and Subletting.** The Grantee shall not assign this Easement nor sublet the Premises, or any portion thereof, without the prior written consent of the County. Said consent may be withheld at the sole discretion of the County, but shall not be unreasonably withheld. Before an assignment shall be effective, any assignee shall assume in writing all obligations of the Grantee under the terms and conditions of this Easement.

6. **Termination and Modification.**

In the event that the Grantee or the Grantor determines that the Property and the Trails are no longer needed or desirable, the Grantee or Grantor may terminate said Easement by written instrument duly signed by Grantee or Grantor and fully acknowledged, and recorded in the land records of Milwaukee County, Wisconsin. This Easement may only be modified or amended by written instrument executed by the parties (or their successors in interest) and recorded in the land records of Milwaukee County, Wisconsin.

7. **Rights Upon Termination.** Upon termination of this easement for cause, the Grantee's rights in the Premises and its obligations hereunder (except any obligations that by their nature or by their language survive termination) shall cease, and the Grantee shall immediately surrender the Premises.

8. **Compliance.** The Grantee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the County, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Premises.

9. **Premises Required by Eminent Domain.**

(a) In the event the Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefore, including but not limited to, all damages and compensation for the diminution of value of this Easement, and the reversion and fee interests, shall belong to the County without and deduction there from for any present or future estate of the Grantee, and the Grantee hereby assigns to the County all of its right, title and interest to any such award. However, the Grantee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Grantee for moving and relocation expenses.

(b) In the event the whole of the Premises or any part thereof shall be taken or condemned so that the balance cannot be used for the same purpose and with substantially the same utility to the Grantee as immediately prior to such taking, this Easement shall terminate upon delivery of possession to the condemning authority and any Easement Fee that has been prepaid for the period following the termination shall be prorated on a per diem basis and refunded to the Grantee unless the Grantee will receive compensation for any prepaid Easement Fee from the condemning authority.

10. **Right of Entry.** The County or its representatives shall have the right to enter upon the Premises at any reasonable time for the following purposes:

(a) To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Easement.

(b) For the purpose of performing work related to any public improvement, provided that the County restores the Premises to a condition equivalent to that which existed on the date the County initiated the installation of the public improvement. The Grantee agrees to hold the County harmless for any loss of access to the Premises by the Grantee, which may occur during the period of installation of the public improvement.

11. Notices. All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by mail or personal delivery to the address of the Parties specified below:

To Grantee:
Wisconsin DNR
Bureau of Facilities and Lands
PO BOX 7921
Madison, WI 53707

To County:
Milwaukee County Parks
Parks Director
9480 Watertown Plank Road
Wauwatosa, WI 53226

Any party hereto may, be giving five (5) days written notice to the other party in the manner stated herein, designate any other address in substitution of the address shown above to which notice shall be given.

12. Severability. If any term or provision of this Easement or the application thereof to the County or the Grantee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Easement, or the application of such terms or provisions to the County or the Grantee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Easement shall be valid and be enforceable to the fullest extent permitted by law.

13. Non-Discrimination. In the performance of the services under this Easement, the Grantee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, or national origin.

14. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the County or the Grantee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the County or the Grantee herein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

15. Entire Agreement. The entire agreement of the parties is contained herein and this Easement supersedes any and all oral contracts and negotiations between the parties.

16. Conflict of Interest. The Grantee shall not employ or contract with any person currently employed by the County for any services included under the provisions of this Easement.

17. Law Applied. This Easement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.

18. Goodwill. Any and all goodwill arising out of this Easement inures solely to the benefit of the County; the Grantee waives all claims to benefit of such goodwill.

19. Quiet Enjoyment. Pursuant to this Easement and subject to the rights and privileges retained by the County and granted to other grantees, the County hereby covenants and agrees that if the Grantee shall perform all of the covenants and agreements herein to be performed on the Grantee's part, the Grantee shall, at all times during the continuance hereof, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from the County or any person lawfully claiming the Premises.

20. Public Record. This Easement shall be recorded, at the Grantee's expenses, at the office of the Milwaukee County Register of Deeds after it is executed by the parties.

NOW, THEREFORE, it is further agreed that the Grantee in consideration of the Easement so granted to it through all the land previously described, hereby covenants and agrees with the County that it will construct and maintain said facilities in good order and condition and that, in and during the construction of said facilities and thereafter in and about their operation, maintenance, repair or reconstruction, will indemnify and save harmless the County, its successors and assigns, from all loss or injury to its property due to such construction, operation, maintenance, repair and reconstruction, and that no special charge will be made against said land, for the cost of such construction, operation, maintenance, repair and reconstruction. The County reserves unto itself, its successors and assigns, all mineral rights.

SIGNATURE PAGES FOLLOW:

IN WITNESS WHEREOF, the authorized representatives of the above named parties have caused their hands and seals to be hereunto affixed.

MILWAUKEE COUNTY

(Signature)
CHRIS ABELE, COUNTY EXECUTIVE
(Print Name-Title)

(Date)

State of Wisconsin)
) ss.
_____ County)

On the above date, this instrument was acknowledged before me by the above named _____ of _____,

known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

(Signature)
JOSEPH CZARNEZKI, MILWAUKEE COUNTY CLERK
(Print Name-Title)

State of Wisconsin)
) ss.
_____ County)

On the above date, this instrument was acknowledged before me by the above named _____ of _____,

known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

(Signature, Notary Public, State of Wisconsin)

(Print or Type Name, Notary Public, State of Wisconsin)

(Date Commission Expires)

Approved as to form:

Reviewed by:

Milwaukee County Corporation Counsel

Milwaukee County Risk Management

ACCEPTED this day _____ of _____, 2019.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By _____
Natural Resources Real Estate Director

State of Wisconsin)
) ss.
Dane County)

Personally came before me this _____ day of _____, 2019, the above named to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission (expires) (is) _____

This instrument drafted by:
Erica Hayden, Milwaukee County Parks