

**PERMANENT LIMITED EASEMENT FOR  
PUBLIC MULTI-USE TRAIL PURPOSES**

The **City of Fitchburg**, a Wisconsin municipal corporation ("City"), being the owner of various parcels located in the City of Fitchburg (the "Property") through which the Capital City State Recreational Trail passes, in consideration of the sum of One dollar (\$1.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged by each party for itself, does grant, set over and convey unto the **County of Dane**, a Wisconsin municipal corporation, ("County"), a non-exclusive Permanent Limited Easement ("PLE") to be used for public multi-use trail purposes including, but not limited to, the right of public ingress and egress to public multi use trail improvements, the right to excavate, install, operate, maintain, repair, replace and modify the public multi-use trail and related improvements, and the right to perform all work incidental thereto on the Property. The Property is more particularly described on Exhibit A and depicted in Exhibit B (the "PLE Area"), both documents attached and incorporated as though fully stated.

**WHEREAS**, the County has constructed a public non-motorized multi-use trail known as the Capital City State Recreational Trail (the "Trail"), within the Lewis Nine Springs E-Way Natural Resource Area which runs from Lake Waubesa west to Verona Road (the "Project"); and

**WHEREAS**, in accordance with the aforementioned Project, the County requested and the City has agreed to formalize this trail use by granting a Permanent Limited Easement for the Trail, on City-owned Property as described in the PLE Areas; and

**WHEREAS**, the Trail is included in the City's \_\_\_\_\_ Plan, which was adopted on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**WHEREAS**, the City of Fitchburg Common Council, at its meeting of \_\_\_\_\_, 2018, did approve the use of the Property for the Project; and

**WHEREAS**, the Trail is included in the Dane County Parks and Open Space Plan, which was adopted in March 2012 by the Dane County Board; and

**WHEREAS**, the completed Trail provides a benefit to visitors and residents of the City, the County and the State of Wisconsin; and

**WHEREAS**, the Trail is a segment of a larger regional public multi-use path with connections to Dodgeville to the southwest via the Military Ridge State Trail; to the Illinois/Wisconsin State line to the south via the Badger State Trail, through the City of Madison to the north and east on the Southwest Bike Path and Cannonball Bike Path, and planned eastern connections to Milwaukee via the Glacial Drumlin State Trail;

RETURN TO:  
Real Estate Coordinator  
Dane County Land & Water Resources Dept.  
5201 Fen Oak Drive, Room 208  
Madison WI 53718

TAX ID(S): 0609-052-4558-7; 0609-054-8510-3;  
0609-054-0076-6; 0609-054-0087-3; 0609-054-0679-7;  
0609-043-2611-6; 0609-043-2111-1; 0609-043-0185-7;  
0609-044-1455-7; 0609-043-1531-5; 0609-041-5100-0;  
0609-044-2728-5; 0609-044-1440-4; 0609-044-1860-6;  
0609-044-6437-9; 0609-033-4285-0; 0609-033-4320-6;  
0609-102-8540-2; 0609-102-4301-5; 0609-102-6302-0;  
0609-102-6453-8; & 0609-102-7533-2

**NOW, THEREFORE**, the City of Fitchburg hereby grants to the County of Dane a non-exclusive Permanent Limited Easement to excavate, install, operate, maintain, repair, replace, modify and perform incidental work as it relates to the Trail and to allow public ingress and egress for the Trail across and through the Property, subject to the following conditions:

1. Construction, Restoration, Repair and Maintenance.

- a. The work of construction shall be done and completed in a good and professional manner by the County. All costs of said construction of the Trail shall be the sole responsibility of the County.
- b. County shall maintain the Trail installed on the Property in good condition and repair. The surface of the Trail shall be compacted crushed stone, blacktop or another hard surface as determined at the County's sole discretion.
- c. The maintenance of the Trail shall be the responsibility of the County or their designee. Maintenance shall mean routine maintenance such as mowing, sweeping or plowing, as well as long-term maintenance of the pavement including patching, sealing, resurfacing or complete reconstruction. The County has the right to use motorized machinery for the construction and maintenance of the Trail and PLE. In the event of major resurfacing, reconstruction, or work on major trail-related elements such as bridges or culverts involving outside contractors and heavy equipment, the County will work with the City to identify and gain City approval for trail access points and time frames to minimize disruption to the City's spur trails and nearby residential landowners.
- d. Construction, installation, and maintenance of spur and access paths to the Trail from City neighborhoods as well as City streets over which the Trail passes shall be the responsibility of the City.
- e. All work shall be performed in a manner so as to not unnecessarily disturb or remove trees from City property within or outside of the PLE Area. In all cases, the County shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all necessary permits required for any construction, repair or maintenance activity.
- f. No above-ground improvements, buildings or structures unrelated to the Trail and its Improvements shall be located in the PLE Areas by either party, with the exception of bridges, culverts and informational kiosks, without written mutual agreement of the City and County.
- g. The County shall have the right to erect signs, at the County's sole expense, necessary to identify the boundaries, to provide directions, and to ensure public safety and proper uses of the Trail and Property.
- h. Should future minor re-alignment of the Trail be recommended within PLE Areas, the County and City shall agree on such re-alignment of the Trail before construction. Appropriate safety measures shall be taken to protect Trail users during construction. The completed re-alignment shall be substantially comparable to the existing segment of Trail in width, materials and utility.

- i. The County shall have the right to improve the Property with plantings and landscaping, which, in the County's sole discretion, may be necessary for the construction, operation and maintenance of the Trail
  - j. The Trail, including all Improvements, is publicly owned, with County being responsible for maintenance of the Trail and Improvements, as described above.
  - k. No grade change shall be made to the PLE Areas without written mutual agreement of the City and County.
2. Operational Control. The City grants to the County the right to oversee and control the use of the Property and the Trail by all persons, including the City and its heirs and assigns, subject to the provisions of this Easement and to control public recreational uses as provided by the Dane County Parks Ordinance.
  3. Trail Fees. The Trail is currently part of a unified statewide trail network and trail pass system in conjunction with the State of Wisconsin. The City grants the County the right to require a DNR State Trail pass and to collect associated fees for Trail users on the Property. Should the status of this state trail system pass and fee system change, the City and County shall provide an amendment to this Easement to address such changes.
  4. Reservation of Use. The City reserves the right to use and occupy the PLE Areas in a manner consistent with the rights conveyed herein, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Improvements or with public ingress and egress.
  4. Compliance. The County and the City shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
  5. Amendment. This PLE may not be amended, modified, terminated, or released without the written consent of all the parties hereto, or their respective successors-in-interest.
  6. Binding Effect. The rights and easement granted herein shall be deemed to be covenants running with the land and shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
  7. Applicable Law. The PLE shall be construed in accordance with the laws of the State of Wisconsin.
  8. Severability. If any term or provision of the PLE conveyance is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of the PLE conveyance and the same shall continue to be effective to the fullest extent permitted by law.
  9. Public Record. This PLE conveyance shall be recorded by the County at the office of the Dane County Register of Deeds.
  10. Indemnification. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are

attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes. The obligations of the parties under this paragraph shall survive the expiration or termination of this Agreement.

11. Assignment. The County shall neither assign nor transfer any interest or obligation in this PLE without the prior written consent of the City.
12. Notices. All notices to either party shall be delivered in person or sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below. Either party may change its address for notice by written notice to the other party:

For the City:                   City of Fitchburg Public Works  
5520 Lacy Road  
Fitchburg, WI 53711-5318

For the County:               Real Estate Coordinator  
Dane County Land & Water Resources Dept.  
5201 Fen Oak Drive, Room 208  
Madison, WI 53718

13. Term. This PLE shall continue for so long as the Trail and improvements installed in the PLE Areas are in use. In the event that said Trail and improvements are removed or abandoned, the PLE shall terminate and the County shall execute and deliver to the City such document(s) as requested by the City for the purposes of terminating the rights granted hereby.
14. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement may only be terminated or extinguished, in whole or in part, by judicial proceedings in the Dane County Circuit Court or its duly created successor court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF FITCHBURG**

By: \_\_\_\_\_  
Jason Gonzalez, Mayor

By: \_\_\_\_\_  
Patti Anderson, City Clerk

State of Wisconsin )  
 )ss.  
County of Dane )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Jason Gonzalez, Mayor of the City of Fitchburg, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print or type name of notary)  
My Commission: \_\_\_\_\_

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Patti Anderson, Clerk of the City of Fitchburg, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print or type name of notary)  
My Commission: \_\_\_\_\_

**COUNTY OF DANE**

By: \_\_\_\_\_  
Joseph T. Parisi, County Executive

By: \_\_\_\_\_  
Scott McDonell, County Clerk

State of Wisconsin )  
 )ss.  
County of Dane )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Joseph T. Parisi, County Executive of the County of Dane, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print or type name of notary)  
My Commission: \_\_\_\_\_

State of Wisconsin     )  
                                  )ss.  
County of Dane         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Scott McDonell, County Clerk of the County of Dane, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print or type name of notary)  
My Commission: \_\_\_\_\_

Execution of this Easement by the County of Dane is authorized by Resolution Enactment No. \_\_\_\_\_, adopted \_\_\_\_\_.

The consent to this Easement by the City of Fitchburg is authorized by City of Fitchburg Common Council Resolution Enactment No. \_\_\_\_\_, File ID No \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_.

Drafted by: Mary M. Kasparek, Assistant Dane County Corporation Counsel