

State of Wisconsin
 Department of Natural Resources
 Box 7921
 Madison, WI 53707

**LAND USE AGREEMENT
 (Over 5 Years)**

Section 23.09(2)(h), Wis. Stats.
 Form 2200-118c
 Rev. 12/2021

THIS LAND USE AGREEMENT (Agreement) is made by and between the State of Wisconsin Department of Natural Resources (Owner) and Dane County (Permittee).

RECITALS

WHEREAS, the Owner owns certain real property as part of Lake Kegonsa State Park located in the **NE ¼ of the SE ¼ and the SW ¼ of the SE ¼ of Section 18, and the NW ¼ of the NE ¼ and the NE ¼ of the NE ¼ of Section 19, and the NW ¼ of the NW ¼ and the NE ¼ of the NW ¼ and the SE ¼ of the SW ¼ of Section 20, T. 6 N., R. 11 E., Town of Pleasant Springs, Dane County, Wisconsin**, that is further described below and referred to in this Agreement as the Premises;

This agreement allows for a ten-foot wide easement area of the NE ¼ of the SE ¼ and the SW ¼ of the SE ¼ of Section 18, and the NW ¼ of the NE ¼ and the NE ¼ of the NE ¼ of Section 19, and the NW ¼ of the NW ¼ and the NE ¼ of the NW ¼ and the SE ¼ of the SW ¼ of Section 20, T.6 N., R.11 E., Town of Pleasant Springs, Dane County, Wisconsin for the construction and maintenance of a new public trail of approximately 1,300 linear feet with this area being the Premises as further depicted on Exhibit A.

WHEREAS, the Permittee desires to construct, operate and maintain a new public trail; and the Permittee shall develop a minimum 10' wide and approximately 1,300' long linear paved bike/commuter/hike, non-motorized trail on the Premises as shown in Exhibit A. The Permittee will restore the remainder of the Premises to its original condition upon completion of construction

WHEREAS, the Owner is willing to allow the construction, operation and maintenance of the new public trail under the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration of the sum of **One Dollar (\$1.00)**, the receipt and sufficiency of which are hereby acknowledged, the Owner and Permittee agree to the following terms and conditions:

1. **Purpose.** Owner agrees that Permittee may construct, operate and maintain a new public recreation trail approximately 1,300 feet in length as a portion of the Dane County Trail System's Lower Yahara River Trail segment.
2. **Parties.** The terms Owner and Permittee, when used herein, shall mean either singular or plural, as the case may be, and the provisions of this Land Use Agreement shall bind the parties mutually, as well as their employees, agents and legal representatives.

Recording Area

Return: Department of Natural Resources
 Bureau of Facilities & Land - LF/6
 P.O. Box 7921
 Madison, WI 53707-7921
 Attn: Bill Peterson (LU 7271)

Parcel Identification Number (PIN):

061118490006, 061118485003, 061119185004,
 061119180009, 061120285000, 061120287704,
 061120222032, 061120221024, 061120220016

3. **Term.** This Agreement shall be in effect for a fifteen (15) year period commencing September 1, 2022 and ending August 31, 2037.
4. **Termination.** Either party may terminate this Agreement upon written notice due to non-appropriation of funds. In addition:
 - i. The owner may terminate this Agreement by written notice in the event that Permittee fails to perform or breaches any terms or condition contained in this agreement and said breach remains uncorrected for a period of sixty (60) days from the receipt of the Owner's written notification of said breach by Permittee. In the event of this method of termination, Permittee will retain compliance responsibility for any state or federal grant assistance requirements.
 - ii. Permittee may terminate this Agreement by written notice to the Owner ninety (90) days prior to termination. In the event of this method of termination, Permittee will retain compliance responsibility for any state or federal grant assistance requirements.
5. **Non-Assignment.** Neither this Agreement nor any right or duty in whole or in part by the Permittee under this Agreement may be assigned, delegated or subcontracted without the prior written consent of the Owner.
6. **Maintenance.** The Permittee shall maintain the Premises in a safe condition at all times (See Section 24 Additional Conditions).
7. **No Parking or Storage.** The Permittee shall not park or store any vehicles or equipment on the Premises at any time unless prior written approval is obtained from Owner.
8. **Construction.** The Permittee has or shall submit for approval to the Owner a plan describing the intended placement or construction of any items on the Premises. No deviations from this approved plan shall be allowed except with the prior written approval of the Owner. Within ten (10) days after the termination of this Agreement, the Permittee shall remove all structures placed on the Premises. If the Permittee's structures remain on the property more than 10 days after termination, (1) title to the structure(s) shall vest in the Owner, or (2) the Owner may remove the structure and the Permittee shall reimburse Owner for all removal costs within thirty (30) days of billing.
9. **Signage.** Any signs, postings and other markers proposed by Permittee to be located on the Premises shall be approved by the Owner prior to placement.
10. **Vegetative Management.** No cutting or trimming of trees or disposal of material shall be done without the prior written approval of the Owner, except for the removal of dead and down trees that obstruct passage of the Premises may be done without such written approval. Any trees removed from the Premises remain the property of the Owner. All trees, stumps, slash, waste materials and other debris generated from trail construction activities shall be removed from the Premises. Use of pesticides and herbicides shall only be allowed with the prior written approval of the Owner. Any pesticides or herbicides used as part of a management plan must conform to the Forest Stewardship Council list found at <https://ic.fsc.org/en/our-impact/program-areas/forest-program/pesticides>. Permittee shall report to the Owner at least annually, the chemicals that are applied on the Premises including the date, product trade name, active ingredient(s) and corresponding CAS number(s), purpose, rate, location with a map, total area treated, and total amount of chemical used.

11. **Public Use.** The Permittee understands that the Premises are open to the public. The Premises are open for use to all members of the general public without regard to race, creed, marital status, color, sex, national origin, age, handicap, ancestry, sexual orientation, arrest record or conviction record.
12. **Indemnity.** The Permittee agrees to save, keep harmless, defend and indemnify the Owner and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or with any actions or omissions of Permittee's employees, agents or representatives. Nothing in this agreement may be interpreted as a waiver of the limitations on liability and other protections granted to Dane County under State law, including, but not limited to, the protections set forth in Wis. Stats. §893.80.
13. **Prohibitions.** The Permittee shall not allow grazing on the Premises. The Permittee shall not disturb or harass wildlife or disturb wildlife habitat on the Premises.
14. **NR 45 Enforcement.** The Owner retains management, supervision and control over the Premises for the purpose of enforcing pertinent state laws needed to protect the Premises, its natural resources or the general public, including Chapter NR 45, Wis. Admin. Code, which governs the conduct of visitors to state lands.
15. **Hunting and Fishing.** This Agreement does not give the Permittee, its guests, members or agents, any rights pertaining to hunting, fishing, or trapping. These rights remain under the control of the State of Wisconsin.
16. **Renewal.** This Agreement may be extended for two years at the Owner's sole discretion. If Permittee seeks a renewal based on the same terms and conditions and fee, it must submit a written request to the Owner at least 90 days prior to the expiration of this Agreement.
17. **Non-Discrimination.**
 - a) In connection with the performance of work under this Agreement, the Permittee agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental handicap as defined in s. 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Permittee further agrees to take affirmative action to ensure equal employment opportunities. The Permittee agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
 - b) If the Permittee employs 50 or more employees and engages in work on the Premises that is estimated to cost fifty thousand dollars (\$50,000) or more, Permittee acknowledges they have a written affirmative action plan in place and upon request will provide it to the Owner.
18. **Entire Agreement.** This Agreement, together with the specifications in any required plan and its referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to this Agreement are hereby superseded. Any contractual revisions including cost adjustments and time extensions must be made by an amendment to this Agreement or other written documentation, signed by both parties at least 30 days prior to the ending date of this Agreement.

19. **Notices.** All notices to either the Owner or the Permittee shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party to the address listed below or to the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.
 - a) To the Owner: Wisconsin Department of Natural Resources, Bureau of Facilities and Lands, 101 South Webster Street, Madison, WI 53707.
 - b) To the Permittee: Dane County Real Estate Coordinator, 5201 Fen Oak Drive, Rm. 208, Madison, WI 53718.
20. **Invalidity.** If any term or condition of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
21. **Enforcement.** It is intended that this Agreement shall be construed as being adequate and legally enforceable. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief.
22. **Headings.** The headings of clauses contained in this Agreement are used for convenience and ease of reference only and do not limit the scope or intent of the clause.
23. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
24. **Additional Conditions.** Additional terms and conditions that apply to this Agreement are enumerated below:
 - a) **Obligations of the Owner**
 - i. The Owner will work with the Permittee to identify funding sources that Permittee may use for the maintenance and/or repair of the trail.
 - ii. The Owner will complete mowing and necessary vegetative management on that portion of the Premises outside the trail surface and day to day maintenance including but not limited to removal of debris and hazardous trees.
 - iii. The Owner is responsible for all-season maintenance and operation of the on-road route through the park from the trailhead to Williams Dr. including but not limited to crack fill and repair, resurfacing, signage replacement, and snow removal.
 - iv. The Owner represents that it has made reasonable inquiry and has no reason to believe that hazardous waste, noxious waste, or any other waste exists that would inhibit the ability of the Permittee to possess and improve the Premises as contemplated by this Agreement. If, however, such prohibitive conditions are discovered, either the Owner or the Permittee shall take all steps reasonably necessary to remove such conditions, or if the parties agree the intent of this Agreement is frustrated by that condition the Agreement shall terminate.
 - v. In the event that the Wisconsin Governor declares a state of emergency under s. 323.10, Wis. Stats., or if the President of the United States declares a federal state of emergency under CFR Title 44, Part 206, the Owner shall be the claimant for any and all damages to the Premises resulting from said state of emergency.

b) Obligations of the Permittee

- i. The Permittee shall develop a minimum 10' wide and approximately 1,300' long linear paved bike/commuter/hike, non-motorized trail on the Premises as shown in Exhibit A. The Permittee will restore the remainder of the Premises to its original condition upon completion of construction.
- ii. The Permittee agrees to complete the project's design phase prior to November 1, 2022, and to begin the construction phase no earlier than December 1, 2022.
- iii. Prior to Permittee's use, Permittee will provide the Owner with a Certificate of Insurance, demonstrating adequate liability coverage and naming the Owner as an additional insured.
- iv. Permittee, as the project sponsor, will be responsible for construction oversight and coordination and will provide opportunity for Owner input.
- v. The Permittee agrees that the allowed trail uses include walking, bicycling, jogging and in-line skating. Subject to limitations imposed by state law and administrative code, the Premises would be open to hunting during the Lake Kegonsa State Park hunting season that is limited to archery hunting only.
- vi. The Permittee is responsible for all-season maintenance and operation of the trail including but not limited to crack fill and repair, resurfacing, line striping, and signage replacement. The Permittee shall submit for approval to the Owner a written trail maintenance and operation plan prior to the trail opening for public use. The parties shall agree on snow removal responsibilities for the trail as part of the approved trail maintenance and operation plan. No deviations from this approved plan shall be allowed except with the prior written approval of the Owner. The Permittee agrees that the development, construction, maintenance, and repair of the trail will meet or exceed the Owner's trail standards and comply with any state or federal law mandates. The Permittee further agrees that it will comply with all applicable state and federal laws when it operates the trail.
- vii. The Permittee shall comply with statutory inspection requirements in accordance with section 23.115(2), Wis. Stats., which are further described in Owner's Manual Code 2527.20, and Permittee shall provide the Owner with copies of all of its inspection reports.
- viii. The Permittee shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, and/or reinstallation, of the trail including, without limitation, zoning, building, health, environmental permits or licenses. The Permittee shall indemnify the Owner against payment of the costs therefore and against any fines or penalties that may be levied for the Permittee's failure to procure or to comply with such permits or licenses, and the Permittee shall pay any remedial costs to cure violations of federal, state, or local laws. The Owner agrees to cooperate with the Permittee in securing any such permits or licenses by providing information and data upon request.
- ix. The Permittee agrees that any signage or display material relating to the trail shall clearly identify the property is a trail owned by the Owner and under the management and control of the Permittee. No commercial advertising shall be allowed on the Premises unless the signage and its placement is in accordance with Owner policy. The Permittee may allow signs providing directional information about trail-related services. No specific business names, commercial logos or fonts, trademarks, or other advertising shall appear in signage within the trail corridor. The Owner reserves the right to remove non-compliant signage located on the Premises. In the event Owner signage policy is modified, this section on signage shall automatically reflect the modification.
- x. The Permittee, in connection with this Agreement, shall open trail-related facilities to the general public subject to reasonable rules and regulations, fees, and charges, as outlined below for the management and operation of the trail.

Rules and regulations.

The parties agree that the Owner retains management, supervision, and control over the Premises

in accordance with section NR 45.02, Wis. Admin. Code, for the purpose of enforcing Chapter NR 45, Wis. Admin. Code, when needed to protect the public or the Premises. Daily routine enforcement remains the responsibility of the Permittee. The Permittee and other local units of government may adopt Chapter NR 45, Wis. Admin. Code provisions by ordinance.

Admission Fees.

The Permittee must use the Owner's trail pass fee program if it charges a fee for use of the trail. If admission fees are charged, the State Trail Pass, both annual and daily, the conservation patron license, and senior citizen recreation card issued by the Owner shall be honored without additional admission charges. The Permittee shall agree to waive all admission fees on State Parks Open House Day, whose date is determined by the Owner, and National Trails Day. National Trails Day is the first Saturday in June.

If the Permittee uses the Owner's trail pass fee program, the Permittee may retain a commission that must be used for trail operations and maintenance as provided for in section 27.01 (8m), Wis. Stats. A separate Trail Pass Sales Agreement between the Permittee and the Owner will be executed, detailing the sales and remittance procedures. The Permittee may use sub-vendors to sell the passes.

If section 27.01(8) or (8m), Wis. Stats., is modified, this section on admission fees shall automatically reflect the modification.

c) General

- i. The Permittee and Owner agree to meet periodically to review development progress, and annually for operational problems and maintenance standards needing attention and to exchange ideas and information for the good of the trail project.
- ii. This Agreement shall not be construed as creating a public debt on the part of the Owner in contravention of Article VIII of the Wisconsin Constitution and any and all payments or obligations herein are subject to the availability of future appropriations.

END OF TERMS AND CONDITIONS

IN WITNESS WHEREOF, the Owner has caused this Agreement to be executed on its behalf this _____ day of _____, 2022.

State of Wisconsin
Department of Natural Resources
For the Secretary

By _____(SEAL)
Terry H. Bay
Bureau Director - Facilities and Lands

State of Wisconsin)
) ss.
Dane County)

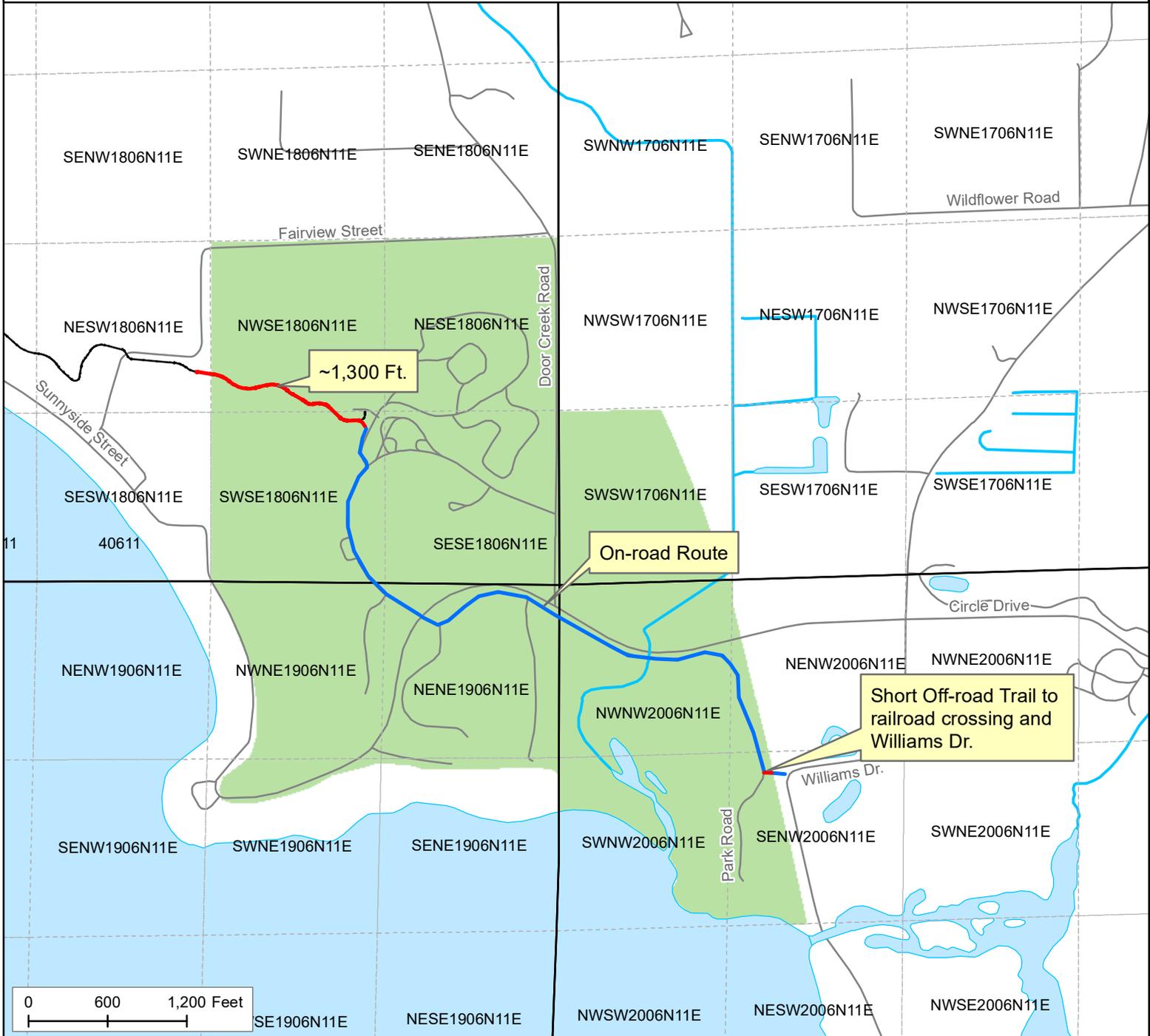
Personally came before me this _____ day of _____, 2022, the above named Terry H. Bay, Bureau Director for Facilities and Lands, State of Wisconsin Department of Natural Resources, to me known to be the person who executed the foregoing instrument and acknowledged that he executed and delivered the same as for the act and deed of said Department of Natural Resources.

Aubrey F. Johnson
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

Exhibit A

Lower Yahara River Trail - Lake Kegonsa Segment T6N R11E SEC 18, 19, 20, Town of Pleasant Springs, Dane County

This exhibit is not to scale, and the data set forth hereon has been obtained from various sources and is of varying, age, reliability and resolution. This exhibit is for illustrative purposes only. No warranty, expressed, or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this exhibit. In the event of any conflicts between the agreement to which this exhibit is attached and this exhibit, the agreement shall control.



Map Key

- New Trail Property
- On-road Route
- DNR Managed Land
- Sections
- QQ Sections



Wisconsin Department of Natural Resources



Bureau of Parks and Recreation
Date: 10/19/2022

Context Map

