

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

**LAND USE AGREEMENT
(5 Year and Under)**

Section 23.09(2)(h), Wis. Stats.
Form 2200-118c
Rev. 04/2024

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 located in the **SW ¼ of the SE ¼ and SE ¼ of the SE ¼ of Section 12, Town 9 North, Range 6 East, Town of Mazomanie, Dane County, Wisconsin**, that is further described below and referred to in this Agreement as the Premises;

A parcel of land located in Government Lot 5 of Section 12, Town 9 North, Range 6 East, Dane County, Wisconsin, more particularly described as follows and as further described on attached Exhibit "A":

Commencing at a found railroad spike marking the South Quarter Corner of said Section 7; thence N89°49'45"W along the south line of Government Lot 4 of said Section 7, 2398.48 feet to a Dane County Aluminum Monument marking the Meander Corner for the Southwest Corner of said Section 7; thence continuing N89°49'45"W, 1154.63 feet to a 3/4" iron rebar; thence continuing N89°49'45"W, 150.0 feet more or less to the easterly bank of a channel of the Wisconsin River; thence S88°40'22"W, 91.06 feet to the westerly bank of a channel of the Wisconsin River, being the east line of an island known as Government Lot 5 of said Section 12 and the Point of Beginning; Thence N89°30'25"W, 62.58 feet to a point on the northeasterly line of a railroad right-of-way; Thence N55°11'01"W along said railroad right-of-way, 102.54 feet; Thence N72°28'00"E, 37.77 feet; Thence N79°38'29"E, 37.77 feet; Thence N89°33'50"E, 46.09 feet to a point on the westerly bank of a channel of the Wisconsin River; Thence southerly and southeasterly along said westerly bank, 92.5 feet more or less to the Point of Beginning.

Containing 6,321 square feet, more or less.

WHEREAS, the Permittee desires temporary construction access necessary for contracted construction of the Wisconsin River recreational bridge and bridge B428E (Wisconsin River Bridge Project), that will become a segment of the shared use Great Sauk State Trail-Walking Iron Trail across the Wisconsin River; and

WHEREAS, the Owner is willing to permit temporary construction access for the Wisconsin River Bridge Project under the terms of this Agreement.

Recording Area

Return: Department of Natural Resources
Bureau of Facilities & Land - LF/6
P.O. Box 7921
Madison, WI 53707-7921

Parcel Identification Number (PIN):
090613197203, 090612490003

AGREEMENT

NOW, THEREFORE, for good and valuable consideration of mutual benefit, 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 and their Contractors may use the Premises for temporary construction access for the Wisconsin River Bridge Project in accordance with approved construction plans as described in paragraph 8.
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.
3. **Term.** This Agreement shall be in effect for a five (5) year period commencing August 1, 2024 and ending July 31, 2029.
4. **Termination.** The Owner may terminate this Agreement by providing 30 days' written notice to Permittee if the Owner determines that the continued use of the Premises by the Permittee will interfere with the future management objectives of the Owner. If the Owner determines that Permittee breached any term or condition contained in this Agreement, Owner may terminate the Agreement immediately.
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 and their Contractor(s) shall maintain the Premises in a safe condition at all times.
7. **No Parking or Storage.** The Permittee and their Contractor(s) 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 and their Contractor(s) to be located on the Premises shall be approved by the Owner prior to placement.
10. **Vegetative Management.** See 24.g. below. ~~No cutting or trimming of trees shall be done without the prior written approval of the Owner, except for dead and down trees that obstruct passage of the Premises may be removed without such written approval. Any trees removed from the Premises remain the property of the Owner. All trees having commercial value including firewood shall be cut in standard lengths and be piled at a location on the Premises designated by the Owner. All stumps, slash, waste materials and other debris shall be disposed of by the Permittee as directed by the Owner. Use of pesticides and herbicides shall only be allowed with the prior written approval of the Owner. Any pesticides used, including but not limited to~~

~~herbicides, insecticides, fungicides, must follow the label and adhere to all local, county, state and federal rules related to pesticide use. Upon request, Grantee must provide pesticide application records for at least 2 years post-application. Grantee agrees to modify its pesticide use if requested by Grantor.~~

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.** See 24 h. below. ~~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.~~
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.** ~~(Include if necessary) This Agreement may be extended for _____ 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 contract, the contractor 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 contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor 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.** With the exception of emergency notice provided to the Property Manager, all notices or other writings this Agreement requires to be given, or which may be given, to either party by the other shall be deemed to have been fully given when made in writing and either by certified mail, return receipt requested or through regular commercially available overnight delivery service with proof of delivery as follows:
 - a) To the Owner: Wisconsin Department of Natural Resources, Bureau of Facilities and Lands, 101 South Webster Street, Madison, WI 53707.
 - b) To Dane County 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 Easement 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. Prior to Permittee's Contractor use, Contractor will provide the Owner with a Certificate of Insurance, demonstrating adequate liability coverage and naming the Owner as an additional insured.
 - b. Permittee will be responsible for construction oversight and coordination and will provide opportunity for Owner input.
 - c. Permittee shall be responsible for gaining all approvals, federal, state and local, including but not limited to the Army Corps of Engineers, Wisconsin Departments of Natural Resources and Transportation, Dane and Sauk counties and all other required bodies of government, necessary to allow the intended construction.
 - d. Permittee agrees that no deviation from the approved plan as described in paragraph 8 shall be allowed except with the prior written approval of the Owner.
 - e. Permittee shall notify the Property Manager (Harrison Stone at Harrison.stone@wisconsin.gov or 608-576-7578) at least seven calendar days prior to commencing any construction.
 - f. Permittee shall comply with all provisions and stipulations required by Wisconsin Department of Natural Resources ERR Log # 23-209 and any revisions thereto or related updates provided by Wisconsin Department of Natural Resources Endangered Resources staff.
 - g. Vegetative Management: 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.
 - h. Indemnity: Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, contractors, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. It is not

the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this Agreement.

END OF TERMS AND CONDITIONS

IN WITNESS WHEREOF, the Permittees and Owner hereby accept and consent to the terms and conditions of this Agreement.

*Scott McDonell, Dane County Clerk
Permittee

Date

State of Wisconsin
Department of Natural Resources
For the Secretary

*Carolyn Morgen, Parks & Recreation District Supervisor
Program Signatory

Date

*Michael LaBissoniere
Real Estate Specialist

Date

*please print name

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

Exhibit "A"

