

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

AGREEMENT

Wis. Stats. ss. 23.09(2)(h) and 23.09(10)

THIS AGREEMENT is made by and between the State of Wisconsin Department of Natural Resources (hereinafter referred to as "DNR") and the Winnebago County Parks Department (hereinafter referred to as "County").

RECITALS

WHEREAS, the State of Wisconsin Department of Transportation (hereinafter referred to as "WisDOT") recently completed the USH 41 project, WisDOT Project ID #1120-11-75 (formerly identified as Project ID #1120-11-73) across Lake Butte des Morts in Winnebago County, Wisconsin;

WHEREAS, as part of said WisDOT Project ID #1120-11-75 WisDOT constructed and graded a 12 foot wide bicycle/pedestrian path, two adjoining fishing accesses to Lake Butte des Morts and scenic overlooks within the USH 41 right-of-way on a strip of land of varying widths abutting and attached to the east side of the northbound lane of USH 41, as built, and as more accurately depicted on the attached Exhibit "A", over and across the following lands in Winnebago County, Wisconsin:

Township 18 North, Range 16 East

Section 3: Part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$;

Section 9: Part of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$;

Section 10: Part of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$;

Section 15: Part of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$;

Section 16: Part of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$;

WHEREAS, in 2007 WisDOT and DNR entered into a Maintenance Agreement, a copy of which is attached for reference as Exhibit "B", for said bicycle bicycle/pedestrian path, two fishing accesses to Lake Butte des Morts and scenic overlooks in which DNR agreed to be responsible for said facilities on WisDOT owned land;

WHEREAS, the DNR now wishes to enter into an agreement with the County where the County will take over and assume the DNR's duties to operate, manage and maintain the bicycle/pedestrian path, two fishing accesses to Lake Butte des Morts and scenic overlooks on the WisDOT owned land for USH 41;

NOW, THEREFORE for good and valuable consideration and the mutual covenants and conditions contained herein, the DNR and the County enter into this agreement purpose of granting the County the non-exclusive right to operate, manage and maintain the bicycle/pedestrian path, two fishing accesses to Lake Butte des Morts and the scenic overlooks on property known as the USH 41 Lake Butte Des Morts Bridge Wiouwash Trail Spur as follows:

It is understood by the DNR and the County that this agreement is subject to the following conditions:

Recording Area

Return: Department of Natural Resources
Bureau of Facilities & Lands – LF/6
P.O. Box 7921
Madison, WI 53707-7921
Attn: Sharene Smith (LUA-_____)

Parcel Identification Number (PIN):

1. The parties hereto confirm and agree that the recitals set forth above are true and correct and incorporate the same herein for all purposes.
2. This agreement shall commence and be effective on the 1st day of October, 2013, and it shall terminate on the 1st day of October, 2033.
3. The County shall operate, manage and maintain a bicycle/pedestrian path, two fishing accesses and the scenic overlooks on the above-described lands located within the corridors of WisDOT's USH 41, for the purposes stated herein.
4. The County agrees that if the bicycle/pedestrian path/trail ever ceases to be used for said purposes for two years, then all agreement rights revert to and revest in the DNR without necessity of reentry.
5. Development and maintenance shall conform to the American Association of State Highway and Transportation Officials (AASHTO) standards for bicycle facilities.
6. All fencing, surveying, signing, and similar activities, which are related to the development, maintenance, and operation of the bicycle/pedestrian path/trail and fishing access including fire suppression, shall be the responsibility of the County.
7. If the DNR conveys any additional agreements within the above-described property, the DNR will require the respective grantees to restore the bicycle/pedestrian path and fishing access to the satisfaction of the County.
8. The County, shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, reinstallation, replacement, of the bicycle/pedestrian path and fishing access including, without limitation, zoning, building, health, environmental permits or licenses, and shall indemnify the DNR against payment of the costs therefor and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial costs to cure violations thereof. The DNR agrees to cooperate with the County in securing any such permits or licenses by providing information and data upon request.
9. The County will not permit any mortgage, pledge, security interest, lien or encumbrance, including without limitation tax liens or encumbrances and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the bicycle/pedestrian path and fishing access or any portion of the agreed upon area.
10. DNR reserves no control over the employment, discharge, compensation of or services rendered by the County employees or contractors, and the County shall be and remain an independent party, and nothing herein shall be construed as inconsistent with the status or as creating or implying any partnership or joint venture between the County and DNR and employees of the County or employees of any contractor shall not be considered DNR employees.
11. In the exercise of its rights herein, including but not limited to the operation of the agreed upon property as a recreational trail, the County shall not discriminate against any member of the public on the basis of age, race, creed, color, handicap, sex, marital status, arrest or conviction records, ancestry, sexual orientation, or membership in the National Guard, state defense force or any other reserve component of the military forces of the United States.

12. In connection with the performance of any work under the agreement, the County agrees not to discriminate against any employee or applicant for employment because of age, handicap, physical condition, developmental disability as defined in s. 51.01(5), Stats., race, religion, sex, color, sexual orientation or national origin regarding employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The County agrees to take affirmative action to ensure employment opportunities for persons with physical disabilities.
13. Daily routine enforcement shall be the responsibility of the County.
14. Notwithstanding Paragraph 2, all rights, duties and responsibilities herein of the County shall take effect upon receipt of a fully signed copy of this agreement.
15. Boundary disputes, trespass and other claims shall be the responsibility of the County. Should any of the adjacent landowners challenge the County's and/or the State of Wisconsin's right to develop this trail by way of court action in either State or Federal court, or by other judicial or administrative challenge, the State will fully defend its rights to develop, in conjunction with the County, the trail which is the subject of this agreement.
16. The County agrees to save, keep harmless, defend and indemnify the DNR and all its officers, employees and agents against any and all liability, claims and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss of damage to any property, (state or other) occurring in connection with this agreement, except for any liability, claim or cost resulting from the negligent or intentional acts or omissions of the DNR, its officers, employees or agents.
17. This agreement shall be non-exclusive, and the DNR retains the right to grant or convey any interest the DNR may hold to one or more person(s), company(s) or entity(s); provided that any such subsequent use, or conveyance does not interfere with the rights granted to the County hereunder.
18. The County's obligation to perform shall be limited to resources that the County is reasonably able to provide and within the limits of available state and/or federal funds and of the County funds required to be appropriated to match any state and/or federal funds.
19. This agreement shall be binding on the parties hereto and their successors and assigns.
20. This agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
21. This agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this agreement.
22. If any term or condition of this agreement shall be deemed invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
23. 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. If a suit is brought to enforce this agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

END OF CONDITIONS

IN WITNESS WHEREOF the Lessor has caused this lease agreement to be executed on its behalf this ____ day _____, 2014.

State of Wisconsin
Department of Natural Resources
For the Secretary

By _____ (SEAL)
Douglas J. Haag
Deputy Bureau Director Facilities & Land

State of Wisconsin)
) ss.
Dane County)

Personally came before me this _____ day of _____, 2014, the above named Douglas J. Haag, Deputy Bureau Director Facilities & Land, 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.

Sharene J. Smith
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

IN WITNESS WHEREOF the County has agreed to and caused this agreement to be executed on its behalf this -
____ day _____, 2014.

Winnebago County

By _____ (SEAL)
Mark L. Harris
County Executive

State of Wisconsin)
) ss.
Winnebago County)

Personally came before me this _____ day of _____, 2014, the above
named Mark L. Harris, County Executive, Winnebago County, 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
Winnebago County.

*

Notary Public, State of Wisconsin

My Commission (expires)(is) _____

CONSENT TO AGREEMENT

IN WITNESS WHEREOF, State of Wisconsin, Department of Transportation, c/o Will Dorsey, Director Northeast Region located at 944 Vanderperren Way, Green Bay, WI 54304, being the fee title owner of the property, hereby consents and agrees to the DNR grant the right to the County to operate, manage and maintain the bicycle/pedestrian path, two fishing accesses to Lake Butte des Morts and scenic overlooks attached to and abutting the north bound lane of USH 41, between Highway 21 and Lake Butte des Morts Drive and caused this consent to agreement to be executed on its behalf this ____ day _____, 2014.

State of Wisconsin
Department of Transportation
For the Secretary

By _____ (SEAL)
Will Dorsey
Northeast Regional Director

State of Wisconsin)
) ss.
Brown County)

Personally came before me this _____ day of _____, 2014, the above named Will Dorsey, Northeast Regional Director, State of Wisconsin Department of Transportation, 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 Transportation.

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

This instrument drafted by:
Attorney Kristin A. Hess
State Bar # 1001214
State of Wisconsin
Department of Natural Resources

Exhibit "A"

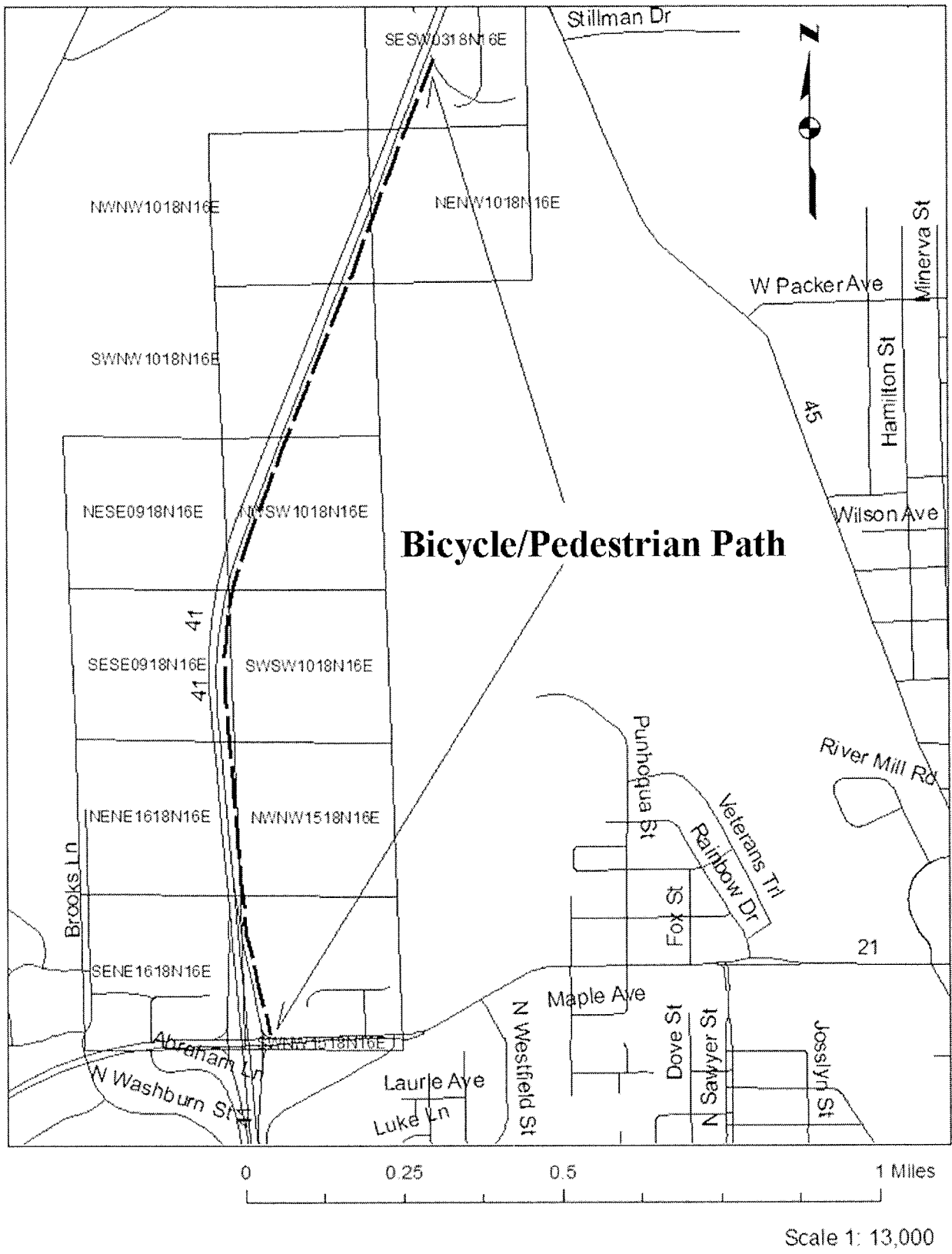


Exhibit "B"

**MAINTENANCE AGREEMENT
FOR
PROPOSED PATH ALONG LAKE BUTTE DES MORTS BRIDGE
US 41
WINNEBAGO COUNTY**

This agreement will document understandings reached between the Wisconsin Department of Transportation, hereinafter called the "WisDOT", and the Wisconsin Department of Natural Resources, hereinafter called the "WDNR", regarding the above referenced project.

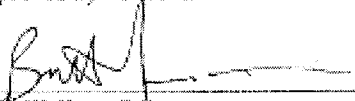
Proposed Improvement

WisDOT project ID 1120-11-73 will include grading and construction of a 12-foot wide bicycle/pedestrian path, which will be located within WisDOT right-of-way. The path begins at the intersection of WIS 21 and Rath Lane, runs North adjacent to US 41 across Lake Butte des Morts and ends at Lake Butte des Morts Drive at the intersection with the Winuwash State Trail.

1. It is understood that WisDOT will:
 - a. Grade and pave a 12-foot wide bicycle/pedestrian path as part of the US 41 project. The fishing access will not be paved.
 - b. Assume all costs and maintenance responsibility associated with the structural integrity of the Lake Butte des Morts Bridges.
 - c. Will maintain ownership of the right-of-way for the path, fishing access and scenic overlooks.
2. It is understood that WDNR will:
 - a. Assume all costs and responsibility for any future maintenance of this bicycle/pedestrian path and the fishing access and scenic overlook areas, except for maintenance associated with structural integrity of the Lake Butte des Morts Bridge.
 - b. Enforce intended bicycle/pedestrian use prohibiting equestrian and motorized travel.
 - c. Submit a permit to work on WisDOT right-of-way before any improvements or maintenance is conducted.

The signatures below signify that WisDOT and WDNR accept and agree to all terms as outlined in this agreement.

Approved by: STATE OF WISCONSIN, DEPARTMENT OF TRANSPORTATION


Brett Wallace, P.E.
Systems Planning & Operations Chief
WisDOT NE Region

Date 2-12-07

Approved by: STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES


Richard Steffes, Director, Real Estate Section

Date 2-5-07