

Document Number

Document Title

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

**STATE TRAIL CONNECTOR
EASEMENT**

Wis. Stats. ss. 23.09(10) and 27.01(2)(g)

THIS STATE TRAIL CONNECTOR EASEMENT (“Easement”) is made by and between the State of Wisconsin Department of Natural Resources (“Grantor”) and the City of West Allis (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner of the former railroad corridor now known as the Hank Aaron State Trail (hereinafter referred to interchangeably as either the “Trail” or the “Premises”); and

WHEREAS, the Grantee desires to construct, operate, maintain, and repair a 10-foot-wide recreational connector trail to provide pedestrian and non-motorized access from the 72nd Street trail corridor on a portion of the Premises (“Easement Area”), described as follows:

A strip of land 20 feet wide being 10 feet wide on each side of the following described centerline and being a portion of the Hank Aaron State Trail formerly known as the Soo Line Railroad Right of Way, located in the Southwest Quarter of the Northwest Quarter of Section 34, Town 7 North, Range 21 East, City of Milwaukee, Milwaukee County, Wisconsin:

Commencing at the Southwest corner of the Northwest Quarter of Section 34, Town 7 North, Range 21 East; Thence North 89°11’25” East, 1,297.85 feet along the south line of the Northwest Quarter of Section 34, to the Point of Beginning of the described centerline; Thence North 01°38’13” West, 54.28 feet to the point of curvature of a curve to the left having a radius of 50.00 feet and a central angle of 33°25’48”; Thence Northwesterly, 29.17 feet along the arc of said curve the long chord of which is North 18°21’04” West, 28.76 feet, Thence North 35°04’01” West, 28.10 feet to the point of curvature of a curve to the right having a radius of 30.00 feet and a central angle of 31°11’02”; Thence Northwesterly, 16.33 feet along the arc of said curve the long chord of which is North 19°28’30” West, 16.13 feet; Thence North 03°52’59” West, 1.70 feet to the Point of Terminus of the describer centerline.

NOW, THEREFORE, the undersigned Grantor does hereby grant to the Grantee, its successors and assigns, for and in consideration of the sum of Five Hundred and no/100ths Dollars (\$500.00), receipt of which is hereby acknowledged by the Grantor, a non-exclusive Easement to construct, operate, maintain, and repair a recreational connector trail (“Connector Trail”) under, across, and through the above-described Easement Area.

It is understood by the Grantor and the Grantee that this grant of non-exclusive Easement is subject to the following conditions:

1. The Grantor and the Grantee confirm and agree that the recitals set forth above are true and correct and incorporate the same herein for all purposes.

Recording Area

Return: Department of Natural Resources
Bureau of Facilities & Lands – LF/6
P.O. Box 7921
Madison, WI 53707-7921
Attn: William Peterson (CE)

Parcel Identification Number (PIN):

2. When notification is required herein regarding the installation, use and maintenance of the Connector Trail, the Trail Manager instead of the Grantor shall be the point of contact, as the Trail Manager has control and authority over issues relating to the management of the Trail.
3. The Grantor grants and conveys to Grantee a non-exclusive Easement for the installation, construction, operation, inspection, maintenance, repair, removal, and replacement of the Connector Trail within the Easement Area. Any additional improvements other than those described herein will require the prior written approval of the Grantor, which may require a new easement or an expansion of the Easement Area.
4. This Easement is limited to the Grantee and is not transferable to a third party, except after prior written notification to and approval by the Grantor.
4. The Grantee shall submit a written notification of project commencement to Grantor's Trail Manager at least 5 working days prior to initiation of any tree and brush clearing, installation, construction, maintenance, repair, removal or replacement work on the Easement Area. The Grantor's Trail Manager has final authority over issues relating to the management of the Premises, including but not limited to changes in the Trail surface (e.g. asphalt impervious surfaces). If an emergency arises within the Easement Area(s) requiring immediate action by the Grantee, the Grantee shall immediately notify the Grantor's Trail Manager that an emergency exists and that the Grantee is proceeding to correct the emergency situation.
5. Grantor grants to the Grantee the right to enter upon the Grantor's Premises outside of the Easement Area for the purpose of gaining access to the Easement Area for the purpose of installing, operating, maintaining, repairing, removing, or replacing the Connector Trail and for the performance of any and all other such acts necessary for the proper installation, maintenance, repair, removal and replacement of said Connector Trail.
6. The Grantee may cut, trim and remove any brush, trees, logs, stumps or branches on the Premises which by reason of their proximity may endanger or interfere with the Connector Trail or the use thereof. Any such undertakings shall be done with the prior written approval and under the supervision of the Trail Manager. Accepted arborist pruning/removal and equipment practices must be adhered to and all waste debris, stumps and slash must be removed and disposed of by the Grantee in a manner acceptable to the Trail Manager off site before project completion. When the removal of a tree is permitted, the stump shall be cut flush with the ground or be removed. All trees having a commercial value, including firewood, shall be cut in standard lengths and piled conveniently by the Grantee, for disposal, by sale or otherwise, by the Trail Manager.
7. All signage placed by the Grantee for purposes of project activities and said Connector Trail shall have prior written approval from the Grantor.
8. The Grantee shall maintain the Premises in a decent, sanitary and safe condition during construction, installation, operation, maintenance, repair, removal and replacement of the Connector Trail, and at no time shall the Grantee allow its work to cause a hazard or unsafe conditions on the Easement Area.
9. The Grantee is responsible for determining if there are any existing utility lines located within the Easement Area. Grantee is responsible for any and all damages, costs or liabilities that result from any damages caused by the Grantee to existing utility lines located within the Easement Area.

10. The Grantee shall obtain all necessary permits, approvals, and licenses and comply with all applicable federal, state, and local statutes, regulations and ordinances in exercising any and all rights granted by this Easement. If required by law, the Grantee shall apply for any and all Chapter 30 and 31, Wis. Stats., licenses, permits or approvals necessary for implementing the rights granted to the Grantee pursuant to this Easement.
12. This Easement does not relieve Grantee from the responsibility to comply with all applicable federal and state laws and local ordinances affecting the design, materials or performance of the permitted activity and does not supersede any other governmental requirements for plan approval or for authority to undertake the permitted activity or exercising any other rights granted herein.
13. The Grantee shall restore the Easement Area in a timely workmanlike manner consistent with the condition of the Easement Area prior to such entry by the Grantee or its employees or agents. This restoration requirement, however, does not apply to the initial installation or construction of the Connector Trail on the Easement Area as it relates to any trees, bushes, branches or roots removed for initial installation or construction, or which subsequently may interfere with the Grantee's use of the Easement Area or create an unsafe condition.
14. The Grantee agrees not to violate any term or condition stated herein. In the event of a violation, the Grantor will give written notice to the Grantee of the violation(s) and the Grantee will have 30 days to cure the violation(s); provided, however, that in the event that the cure of such violation cannot be accomplished within such 30-day period despite diligent and continuing efforts by the Grantee, the time to cure the violation may be extended for a reasonable amount of time to permit the Grantee to complete the cure. In the event the violation(s) has not been cured to the reasonable satisfaction of the Grantor within the time frame allowed, the Grantor, at the Grantor's discretion, shall have the right to declare this Easement terminated, and shall have the right to take full control of the Easement Area, without hindrance or delay, and may use its legal remedies for recovery from the Grantee of all damages caused by the violation of this Easement by the Grantee.
15. The Easement shall automatically terminate, without right of reentry, upon:
 - a. Grantee's express abandonment of the Easement Area; or
 - b. An implied abandonment as evidenced by the non-use by Grantee of the Easement Area for a consecutive period of 2 years.
16. The Grantee assumes and agrees to protect, indemnify and save harmless the Grantor, agents, officers and employees from and against any and all claims, demands, suits, liability and expense by reason of loss or damage to any property or bodily injury including death, arising directly or indirectly from:
 - a. The construction, installation, operation, maintenance, existence, use, repair, removal and replacement of the Connector Trail on the Premises;
 - b. Any defect in the Connector Trail or failure thereof;
 - c. Any act or omission of the Grantee, its agents or employees while on or about the Easement Area or any of Grantor's adjoining lands;
 - d. Grantee's exercise of any and all rights, duties and responsibilities granted by this Easement; and/or
 - e. Any defect of insufficiency of title or authority of the Grantor to convey this Easement.
17. At all times the Grantee shall be required to provide the Grantor adequate evidence of financial responsibility to meet the liabilities, losses, demands and actions from which the Grantee is required to meet. Evidence of adequate financial responsibility shall be either appropriate evidence that the Grantee is self-insured and has sufficient resources to provide coverage equivalent to an insurance policy having combined single limits of not less than \$500,000.00 or, alternatively, evidence of an appropriate

insurance policy having combined single limits of not less than \$500,000.00. Upon request, the Grantee shall furnish the Grantor the requisite certificate, or other proof of insurance showing that the Grantor and its officers, employees and agents, are named as additional insureds under the insurance policy. The Grantor may require greater evidence of resources or higher limits of insurance coverage if it determines that greater coverage is reasonably required to cover the risks presented by the underground line. The Grantee shall furnish the Grantor evidence of adequate financial responsibility on or before the effective date of the Easement. If at any time the Grantor determines that the Grantee has not provided adequate evidence of financial responsibility, the Grantee shall immediately suspend any construction, installation, operation, maintenance, repair, removal or replacement on the Easement Area(s) until adequate evidence of financial responsibility is again provided to the Grantor.

18. All notices or other writings this Easement 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 deposited in the United States mail, prepaid and addressed as follows:
 - a. To the Grantor: Wisconsin Department of Natural Resources, Bureau of Facilities and Lands, WDNR, 101 South Webster Street, Madison, WI 53707. Phone Number (608) 266-2136.
 - b. To the Trail Manager: .
 - c. To the Grantee: City of West Allis, Engineering Department, 7525 W. Greenfield Avenue, West Allis, WI 53214. Phone Number: (414) 302-8360.
 - d. The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided may be changed by written notice given by such party as above provided.
19. The Grantor retains management, supervision and control over the Easement Area for the purpose of enforcing Chapter NR 45, Wis. Adm. Code, which governs the conduct of visitors to state lands and provides for the protection of the natural resources, as well as other pertinent state laws, when needed to protect the Easement Area or the general public.
20. The Grantor does not represent or warrant that title to the Easement Area is free and clear of all encumbrances or that it will defend the Grantee in its peaceful use and occupancy of the Easement Area.
21. In event of a necessary relocation or removal of the Connector Trail, whether initiated by the Grantor, a Railroad with an interest in the Trail, the Grantee, or any other entity, the costs associated with relocating or removing the Connector Trail shall be borne by the Grantee.
22. This Easement shall be binding on the parties hereto and their successors and assigns, as limited by condition 4, above.
23. This Easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
24. This Easement sets forth the entire understanding of the Grantor and the Grantee and may not be changed except by a written document executed and acknowledged by the Grantor and the Grantee.
25. If any term or condition of this Easement shall be deemed invalid or unenforceable, the remainder of this Easement shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
26. Enforcement of this Easement 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 Easement, either to restrain or prevent the violation or to obtain any other relief.

27. Additional Terms and Conditions specifically pertinent to this Easement will be valid if enumerated below:
- a. Relating to installation, construction, operation, maintenance, and replacement work within the Easement Area, work shall be completed as follows:
 - i. Other than as otherwise permitted herein, the Trail should remain open for public use at all times. Trail closures will not be allowed during snowmobile season and may not be allowed at certain times during bicycling season depending on planned events, activities, or volume of use. All closures must be coordinated with the Trail Manager and a well-marked Trail Manager-approved alternative re-route must be established by Grantee. Any trail closure of more than 1 day may be done only with prior written permission of the Trail Manager.
 - ii. If the Trail must be blocked at any time due to safety, a flag person must be present or appropriate signage must be installed such that Trail users are informed of the blockage and an acceptable detour (if needed) must be provided by the Grantee so users can pass through safely. Grantee shall not use the Trail right-of-way for backing of any equipment unless a flag person is present and directing trail traffic.
 - iii. Warning signs, lights, or such other safety markers as necessary shall be placed informing trail users of any construction work or as otherwise directed by the Trail Manager.
 - iv. If needed, as determined by the Trail Manager, Grantee shall place passable barricades at entry points for trail users that require Trail users to substantially reduce their speed and proceed single file. Barricade points must include signs stating that construction activities are taking place along the trail, listing a reduced speed limit, and indicating 2-way, single-file traffic.
 - v. Insofar as is practicable and when the Grantor requests other than during the initial construction or due to an emergency situation, the Grantee shall schedule any construction work in an area used for recreational purposes at times when the ground is frozen in order to prevent or reduce soil compaction. All work will be conducted to minimize soil disturbance. All rutting will be repaired, and the Premises restored as promptly as possible by Grantee following its work. If soils are not frozen or stable to a point that avoids rutting, timber mats, mud tracks, or equivalent must be utilized to access installation, construction, maintenance, or replacement locations.
 - vi. Grantee shall take extreme care to avoid disturbing other facilities on the Easement Area, including drainage and wetlands, if any. All stormwater and land disturbance regulations and code shall be followed and permitted accordingly. No work may be done that increases drainage onto the Grantor's Premises and adjoining lands without prior approval.
 - vii. Grantee shall not park or store any vehicles or equipment on the Trail right-of-way at any time unless authorized in writing by the Trail Manager.
 - viii. No additional connections will be made to the Trail without Grantor's approval.
 - b. The Trail may be encumbered by federal or state railroad interest and subject to future restoration and reconstruction of the right-of-way for rail purposes consistent with Section 208 of the National Trails System Act Amendment of 1983, Publ. L. No. 98-11 (16 U.S.C. 1247(d)) or Wis. Stat. s. 85.09, including possible termination of this Easement, and subject to reservations, exceptions and leases, agreements and permits authorized by the former railroad company or the Grantor prior to the execution of this Easement. The Grantor shall provide written notice of the necessity for the reestablishment of railroad, which may result in the termination of this Easement upon the discretion of the railroad. The Grantee shall: (1) not materially change the grade or topography of the Easement Area; (2) not construct and install or remove any permanent improvement which violates American Railway Engineering and Maintenance-of-Way Association ("AREMA"), or its successors' published practices and procedures or would make such reestablishment of railroad impracticable; and (3) not allow the installation of any facility, above or below grade that does not conform to AREMA's standards or clearances for railroads.

- c. If any portion of the Trail is damaged or destroyed by the Grantee, the Grantee shall be solely responsible to repair and restore the damaged area in a timely, workmanlike manner, using the same type and quality materials that meet the Grantor's Trail Design Standards and guidelines and as approved by the Trail Manager. The Grantee agrees to reimburse the Grantor for any property damage to the Grantor's Premises that may arise from the construction, maintenance, or use of the Connector Trail on the Grantor's described lands.
- d. Use of pesticides and herbicides shall only be allowed with the prior written permission of the Grantor which shall not be unreasonably withheld, delayed or denied. 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>. Grantee shall report to the Grantor (i.e. property manager and the DNR Pesticide Use Team), at least annually, the chemicals that will and have been applied on the Premises and the Easement Area(s), 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 chemicals.

END OF CONDITIONS.

IN WITNESS WHEREOF, the Grantor has caused this Easement to be executed on its behalf this ____ day of _____, 2021.

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 _____, 2021, 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 Johnson
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

IN WITNESS WHEREOF the Grantee has agreed to and caused this easement to be executed on its behalf this _____ day of _____, 2021.

City of West Allis

By _____ (SEAL)

Peter C. Daniels
City Engineer

State of Wisconsin)
) ss.
Milwaukee County)

Personally appeared before me this _____ day of _____ 2021, the above named Peter C. Daniels, City Engineer, to me known to be the person who executed the foregoing instrument and acknowledged the same as and for the act and deed of the Grantee.

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

* Please print name.

EXHIBIT A