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| Document Number | Document Title |  |

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 XXXX)

Parcel Identification Number (PIN):

024-0583-00000\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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| State of Wisconsin  Department of Natural Resources  Box 7921  Madison, WI 53707 | **LAND USE AGREEMENT**  **(Trail – Over 5 Years)**  Section 23.09(2)(h), Wis. Stats.  Form 2200-118  Rev. 09/2019 |

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

**RECITALS**

**WHEREAS, the Owner is the successor in title of the former railroad corridor of the Chicago Northwestern Transportation Company, known today as the “400 State Trail” (“Trail”);**

**WHEREAS**, the Owner owns certain real property located in the

**SW¼ of the NW¼ and the NE ¼ of the SW ¼ of Section 21, Town 13 North, Range 3 East, Town of La Valle, Sauk County, Wisconsin,** that is further described below and referred to in this Agreement as the Premises;

That portion of the 400 State Trail located in the SW¼ of the NW¼ and the NE ¼ of the SW ¼ of Section 21, Town 13 North, Range 3 East, Town of La Valle, Sauk County, Wisconsin, as further described on Attached Exhibit A.

**WHEREAS**, the Owner may enter into agreements permitting others to engage in mutually beneficial activities on its property;

**WHEREAS**, the “400 State Trail” along the Hemlock Slough Pond is a component of the embankment creating the impoundment of water, and the Permittee as the owner and operator of the outlet structure and embankment in which the outlet structure is located desires to utilize the trail to gain access to the outlet structure for reconstruction, maintenance and vegetation management of the structure to comply with dam safety requirements under NR 333 of the State Administrative Code. Vegetation management of the trail embankment which is a component of the dam will be maintained by the Owner.

**WHEREAS**, pursuant to State Statute 66.0301, Wis. Stats., the Owner and the Permittee are authorized to enter into this Agreement.

**WHEREAS**, the Owner is willing to allow access to the Premises for those duties further described in this document under the terms of this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration of the sum of $0.00 as both the Owner and the Permittee are benefitting from the activities identified above, the receipt and sufficiency of which are hereby acknowledged, the Owner and Permittee agree to the following terms and conditions:

1. **Purpose.** The Permitteeis the owner and operator of the dam outlet structure and small embankment in which the outlet structure is located (hereinafter referred to as the “Spillway Embankment”.) The Owner agrees that the Permittee may utilize the Premises defined as the trail from the easterly right of way of McKinney Road to a point 150 feet southeast of the trail bridge spanning the creek that runs out of Hemlock Slough to access the Spillway Embankment for the reconstruction, maintenance, operation and vegetative management of the structure. The limits of the dam, as measured along the centerline of the improved trail, are from a point 1,500 feet northwest of the bridge spanning the creek that runs out of Hemlock Slough to a point 150 feet southeast of the bridge. The limits of the dam also extend each way of the trail centerline to the toe of the embankment and include all earthwork, outlet piping, riser structures, valves, gates, and other appurtenant works.
2. **Parties.** The terms Owner and Permittee, when used herein, shall mean either masculine or feminine, 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 \_\_fifteen\_\_ (15) year period commencing \_\_\_\_\_, Month date 2022\_\_\_\_\_\_\_\_\_\_\_ and ending \_\_Month date, 202\_ \_\_\_\_\_\_\_\_\_. Depending on terms of a renewed Agreement, or in the case of a non-renewal of the Agreement, a Dam Transfer under Chapter 31, Stats., or rules promulgated thereby, may be required.
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. Any termination of the Agreement may cause a Dam Transfer under Chapter 31, Stats., or rules promulgated thereby, to be required. The Permittee may initiate termination of this Agreement by following the dam abandonment procedures as set forth in Chapter 31, stats.
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.
7. **No Parking or Storage.** With the exception of routine maintenance and operation 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 maintenance or construction on the Premises. The Permittee may not alter the terrain, vegetation or elevation of the Premises, except upon written approval of a construction plan by the Owner. 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 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 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 is open to the public. The Premises is 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.
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. In coordination with the Owner the Permittee or agents of the Permittee may remove wildlife that are determined to be causing damage to the dam, by lethal means or otherwise, consistent with applicable statues and administrative code.
14. **NR 45.** The Owner retains management, supervision and control over the Premises 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 Premises or the general public.
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.

1. **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.
2. **AREMA.** Conveyance of this agreement 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 agreement, and subject to reservations, exceptions and leases, agreements and permits authorized by the former railroad company or the Owner prior to the execution of this agreement. Owner shall provide written notice of the necessity for the reestablishment of railroad, which may result in the termination of this agreement upon the discretion of the railroad. Permittee shall: (1) not materially change the grade or topography of the Agreement 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 railroad. Any termination of the Agreement may cause a Dam Transfer or Dam Abandonment under Chapter 31, Stats., or rules promulgated thereby, to be required.
3. **Non-Discrimination.**
   1. 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 disability 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.
   2. 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.
4. **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.
5. **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.
6. To the Owner: Wisconsin Department of Natural Resources, Bureau of Facilities and Lands, 101 South Webster Street, Madison, WI 53707.

b.) To the Permittee:  Sauk County, ATTN: Matt Stieve, Dam Operator, S7995 White Mound Drive, Hillpoint, WI 53937.

1. **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.
2. **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.
3. **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.
4. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
5. **Additional Conditions.** Additional terms and conditions that apply to this Agreement are enumerated below:

1. Other Responsibilities of Permittee:
   1. Permittee is responsible for re-seeding disturbed areas caused by the reconstruction maintenance or operation of the Spillway Embankment. Utilizing a seed mix approved by the Owner.
   2. Permittee is responsible for locating and relocation of all utilities and obtaining proper permits prior to any constructions.
   3. If any portion of the trail surface is damaged due to the reconstruction, maintenance, operation or vegetative removal the Permittee shall repair the trail surface to original condition or better.
   4. Permittee shall make every effort to maintain the trail as open to the public at all times. Permittee shall provide proper signage notifying the public during periods of construction. If the trail needs to be closed to maintain public safety Permittee will notify the Owner 48 hours in advance and provide proper signage, flaggers or trail reroute as necessary.
   5. Permittee is responsible for the maintenance and repair of any damage or failure of the entire length of the Premises by construction or maintenance equipment associated with the Permittee’s activities.
   6. 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.
2. General Obligations of Owner.
   1. The Owner is responsible for the continued operation and maintenance of the improved trail surface, trail shoulders, signage and any structures associated with providing public trail use.
   2. The Owner is responsible for repairs of any damage or failure of the embankment or trail caused by but not limited to permitted or unpermitted trail use by the public, washout/rill erosion not associated with embankment seepage or waterway flooding, or by construction or maintenance equipment associated with the Owner’s activities.

END OF TERMS AND CONDITIONS

**IN WITNESS WHEREOF**, the Owner has caused this Agreement to be executed on its behalf this  
 \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, 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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Permittee Date

State of Wisconsin

**IN WITNESS WHEREOF**, the Permittee has caused this Agreement to be executed on its behalf this  
 \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

Sauk County Wisconsin

By (SEAL)

Title of signature authority

State of \_\_\_\_\_\_\_\_\_\_\_\_\_ )

) ss.

\_\_\_\_\_\_\_\_\_\_\_\_ County )

Personally appeared before me this\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_\_\_, the above named Name and title, 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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission (expires) (is) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Please print names

This instrument drafted by:

State of Wisconsin

Department of Natural Resources

