

# TRAIL PERMIT

## EXTENDING ALONG THE BADGER SPUR OFF OF WSOR'S REEDSBURG SUB IN THE TOWN OF MERRIMAC APPROXIMATELY BETWEEN RAILROAD MILEPOSTS 0.0 and 0.50

Wisconsin Department of Transportation  
PO Box 7914  
Madison, WI 53707

Sauk County  
505 Broadway Street  
Baraboo, Wisconsin 53913

### County WisDOT Premises

On this \_\_\_\_ day of \_\_\_\_\_, 2023, Sauk County ("County") submits to the State of Wisconsin Department of Transportation ("WisDOT"), this Trail Permit to occupy and use certain rail property ("Premises") owned by WisDOT. The Premises are located in the Town of Merrimac, Sauk County, Wisconsin and are described with greater detail in Exhibit A (attached).

### Effect of Acceptance Permit

1. Upon execution of the last page of this Permit at the appropriate place, the provisions herein shall be deemed to be the Permit issued by WisDOT to the County. The Permit shall be binding on both the County and WisDOT.

### Term of the Permit

2. The term of the Permit will commence upon WisDOT's execution of the last page of this Application as described at paragraph 1. above and the term will continue until the Permit is terminated by the County or by WisDOT pursuant to the provisions of paragraph 17., paragraph 18., or paragraph 19. below.

### Use for Trail

3. The Premises may be used by the County as a public-way for pedestrians and bicycles, including related uses without limitation, inspection, maintenance, repair, replacement, and removal of each such use or for one or more of each such uses. Throughout this document all the above-described uses are collectively called the "Trail". These improvements will be constructed substantially as set forth in project plans that have been prepared by the County and have been approved by WisDOT (Exhibit B attached).

### Motorized Vehicles Prohibited; Exceptions

4. All other Motorized vehicles will be prohibited on the Premises except for:
  - a. Emergency vehicles and vehicles belonging to the County, the County's agents, WisDOT, or any railroad operator authorized to use the adjoining railroad tracks ("Railroad Operator") if such vehicles are used to survey, design, construct, operate, use, inspect, maintain, repair, replace, and remove the Trail, adjoining railroad facilities, and railroad equipment, or are used for one or more such purposes.
  - b. Any device described in sec. 340.01(43), Stats., for pedestrian use by disabled persons.

### County Obligations

5. The County will do the following:

### Permits

- a. The County will obtain any necessary permits relating to construction of the Trail.

### Plan Approval

- b. The County will consult with the Railroad Operator and WisDOT regarding final plans relating to the Trail

### Snow Removal

- c. The County will not cause snow removed from the Trail to be stored or piled

upon the railroad tracks or ballast.

**Comply with  
Laws**

- d. The County will maintain and use the Premises and structures thereon in accordance with the requirements of all state laws, and federal laws in effect during the term of the permit
- e. The County will keep the Premises and all structures thereon in good condition and repair.

**Maintenance**

- 6. To the extent allowed by law, the County will indemnify and hold harmless WisDOT, the Wisconsin River Rail Transit Commission (WRRTC) and its member counties, and the Railroad Operator under the terms and conditions described in this paragraph.

**Indemnification  
of the Railroad  
Operator  
By the County**

- a. While the Permit is in effect, to the extent allowed by law the County will indemnify and hold harmless WisDOT, the Wisconsin River Rail Transit Commission (WRRTC) and its member counties, and the Railroad Operator for any claim, demand, loss, or any expense incurred as the result, in whole or in part, of the use of and/or activities of any kind and nature related to the existence of the Trail. This indemnification agreement by the County includes liability for the indemnities' own negligence.
- b. In the case of any incident for which a potential claim, loss, or expense as defined above may arise, the County shall investigate such claim, attend to the settlement or other disposition of such claim or demand, defend any action on such claim or demand, and pay all charges of attorneys and all other costs and expenses arising from any such claim or demand during the term of this Permit, including any extension of this permit, the County shall, at its own expense, ensure that the WisDOT, WRRTC and the Railroad Operator are included as additional insured's on the County's liability insurance policy.
- c. WisDOT will require the Railroad Operator to provide a complete copy of the Railroad Operator's commercial general liability policy to the County upon request. Such copies will be provided to the County as soon as practicable after they are available to the Railroad Operator, but in any case no later than within 60 days of the effective date of the policy.

**Pollutants  
Contaminants**

- 7. The County will comply with all laws enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants; to proper disposal of refuse, solid wastes or liquid wastes, and to any other law relating to pollutants or contaminants that may be applicable to the County or to the County's activities on the Premises. The County shall bear all costs and expenses arising from compliance with such laws and shall indemnify and save harmless WisDOT from all liability for which the County is liable pursuant to such laws.

**Access Over  
Roadways**

- 8. The County accepts the Premises subject to any existing rights of any party, including WisDOT's, in and to any existing roadway. The County agrees to provide such parties, including WisDOT, access over and through the Premises on any such existing roadway whenever such access is reasonably necessary. The County further agrees that WisDOT shall not be responsible for the care or maintenance of such roadway.

**Signs**

- 9. The County will not post, paint or place, or permit others to post, paint, or place, on the Premises, any advertisement or sign not directly related to the Trail. In relation to the Trail, County will provide Signage Plan to WisDOT and Railroad Operator in

advance of this permit being approved.

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|------------------------------|--|
| <b>Fencing</b>               | 10. The County will erect and maintain fencing to reduce trespassing parallel to the tracks as shown on the approved plans (Exhibit B).  |
| <b>Railroad Access</b>       | 11. The County will not interfere with the Railroad Operator's access to the railroad track and will not interfere with the Railroad Operator's reasonably necessary access to railroad structures now on the Premises, if any.  |
| <b>New Buildings</b>         | 12. The County will not erect a new building or facility of any type on the Premises except pursuant to the Trail project plans approved by WisDOT or except upon written approval of WisDOT.  |
| <b>New Crossings</b>         | 13. The County or any party and/or contractor affiliated with the County will not construct any new at-grade crossings across WSOR's Badger Spur in order to access the Trail at any point over the term of this permit.   |
| <b>Liens</b>                 | 14. The County will not suffer or permit any lien of mechanics or material men to be placed upon the Premises, or any part thereof, and in case of any such lien attaching, it will immediately pay off and remove the same. It is further agreed by the parties hereto that the County has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of the County, operation of law, or otherwise, to attach to or to be placed upon WisDOT's title or interest in the Premises.   |
| <b>Hazards</b>               | 15. The County and WisDOT will not create any hazard to safety for railroad operations or for persons using the Trail.   |
| <b>Damage to the Trail</b>   | <ul style="list-style-type: none"><li>a. The County will correct, as soon as practicable after the County is aware that a hazard exists, any hazard to safety for railroad operation or for persons using the Trail, except WisDOT will correct as soon as practicable any such hazard caused by WisDOT.</li><li>b. The County or WisDOT may take any steps reasonably necessary to correct or remove any known safety hazard within the premises.</li><li>c. The County and its agents or WisDOT may close the Trail as is reasonably necessary to accommodate railroad maintenance work or to correct or remove any known safety hazard within the Premises.</li></ul> |
| <b>Track Maintenance</b>     | 16. WisDOT and the Railroad Operator continue to have the right to maintain or relocate existing track facilities, or to construct and thereafter maintain new facilities, on or in the vicinity of the Premises.  |
| <b>Other Recorded Rights</b> | 17. The County accepts the Premises subject to the existing recorded rights of any other party in the Premises. If it becomes necessary to relocate any facility that is now located within the Premises pursuant to rights recorded prior to the effective date of the Permit, and if the reason the facility must be relocated is that the County obtained the Permit, then the County shall, at its option, pay the cost of so relocating the facility, move its own facilities so that the other facility does not have to be moved, remove a portion of the Trail from the Premises, or terminate the Permit.   |

**Termination of the Permit as a Consequence of a Default**

18. In the event of a material default under, or material breach of, a provision herein, one party may serve on the other party a 30-day notice of the first party's intention to terminate this Permit as a consequence of the default or breach. The notice shall specify the manner in which the first party contends the second party is in default under, or has breached, a provision of the Permit, shall specify the precise Permit provision the first party contends the second party is in default under or has breached, and shall specify what corrective action the first party believes would cure the default. The Permit will terminate at the end of the 30-day period unless the described condition is not material default or material breach of the Permit or unless the described default or breach has been corrected prior to the expiration of the 30-day period.
- a. Upon termination of the Permit under paragraph 18. or 19., the County shall, if so directed by WisDOT, remove, as soon as is reasonably practicable, all buildings, structures, foundations, footings, materials, signs, debris, articles, structures, or facilities that are a part of the Trail.
  - b. No waiver of any default under, or breach of, a provision of the Permit shall be implied from an omission by the other party to take any action on account of such default or breach. No express waiver shall affect any default or breach other than the default or breach specified in the express waiver and that only for the time and to the extent therein stated.
  - c. The erection of building or other improvements on the Premises shall not constitute a waiver or affect in any way the right of either party to terminate the Permit.

**Termination of the Permit for Reason Other than Default**

19. The County or WisDOT may terminate the Permit for any reason other than default under, or breach of, a provision of the Permit upon 180 days' notice. Upon the termination of the Permit under this paragraph 19., the County shall, without further demand, deliver possession of the Premises to WisDOT.

**Rights Cumulative**

20. All rights and remedies of the parties shall be cumulative, and none shall exclude any other rights or remedies allowed by law.

**Modification of Permit**

21. All of the representations and obligations of the parties are contained herein. No modification, waiver, or amendment of the permit, or of any of its provisions, shall be binding upon either party unless it is in writing and is signed by a duly authorized office of each party.

**No Assignment or Sale**

22. There shall be no sale, assignment, subletting, or transfer of any kind by the County of the permit, of the Premises, or of any portion of the Permit or Premises except that the County may transfer its interest in the Permit to another governmental entity if:
- a. The governmental entity agrees in writing to be bound by the provisions of the Permit
  - b. WisDOT approved the transfer, and if WisDOT approves the terms and timing of the transfer.
  - c. The approvals of WisDOT described in this paragraph will not be unreasonably withheld. No action by one or both of the parties shall constitute a waiver of this provision other than an express written waiver.

**County Rights  
Under Law**

23. Notwithstanding any other provision herein, the County retains and does not waive, alter, or amend, in any manner or to any extent, any and all procedural rights and protections the County has under law in the circumstance that a party desires or attempts to make a claim against the County. Notwithstanding any other provision herein, the County retains and does not waive, alter, or amend, in any manner or to any extent, any and all limitations on liability the County has under law in the circumstance that a party desires or attempts to make a claim against the County, and such limitations shall hereby be extended to contractual liability and alleged contractual liability arising out of the terms of the permit as well as any and all other kinds of liability. All provisions of the Permit shall be interpreted, limited, modified, or eliminated so that the provisions of this paragraph 23. prevail over any provision of the Permit that is inconsistent with a provision of this paragraph 23.

**SAUK COUNTY**

A body corporate and an agency of the State of Wisconsin

By: \_\_\_\_\_  
SAUK COUNTY

Date: \_\_\_\_\_

**WISCONSIN & SOUTHERN RAILROAD, L.L.C.**

Wisconsin & Southern Railroad, L.L.C. hereby acknowledges having reviewed this trail proposal and concurs with issuing this Permit.

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Trail Permit submitted to the State of Wisconsin, Department of Transportation by the Sauk County, dated the \_\_\_\_ day of March 2023 is hereby accepted by the Department of Transportation on this \_\_\_\_ day of March 2023. A Permit to Use the Premises subject to the provisions of the Permit, is hereby issued to the Sauk County by the Department of Transportation.

**WISCONSIN DEPT. OF TRANSPORTATION**

By \_\_\_\_\_  
Railroads and Harbors Section Chief

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_

**EXHIBIT A**  
**To Trail Permit Application**

**THE PREMISES**

The Premises consist of that portion of WisDOT's railroad corridor on the Badger Spur near Goette and Halweg Roads in Sauk County Wisconsin, extending between railroad milepost 0.0 and 0.50

The premises are further shown on the final plans (Exhibit B) which are made a part of the Permit.

