

MEMORANDUM OF UNDERSTANDING
BETWEEN _____{COUNTY NAME}_____ COUNTY AND
THE STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES
{SHADED / UNDERLINED TEXT WILL VARY. DELETE THIS LINE BEFORE SIGNING.}

I. Introduction

The purpose of this Memorandum of Understanding, (MOU) is to set forth the agreements and understandings which have been reached between _____{COUNTY NAME}_____ County, (County) and the State of Wisconsin Department of Natural Resources (Department) regarding the acquisition, development, and operation of approximately ___{NUMBER OF MILES}___ miles of former rail corridor known as the _____{TRAIL NAME}_____ State Trail (Trail). The property on which the trail is located (Property) *is presently/will be* owned by the Department.

The Department is interested in preserving the corridor for trail purposes and in creating trails for public use. The County is interested in developing, maintaining, and operating a public recreational trail on the corridor *provided the Department acquires the corridor*. The County and the Department agree to work together to achieve their mutual goals as set forth below.

II. Description of the Property

The property subject to this MOU is described generally as the grade from **X** to **Y** (Property). An exact legal description of the property shall be attached to this document as Exhibit A and a map attached hereto as Exhibit B. The trail easement referred to in this MOU, when executed, shall include and incorporate this MOU along with all of its exhibits.

III. Consideration

The Department *has acquired/will acquire* the grade from _____{ENDPOINT1}_____ to _____{ENDPOINT2}_____ from the corridor owner. The Department will execute a trail easement with the County for the purposes contained in this document. The County will develop, operate, repair, and maintain the Trail.

IV. Obligations of the Department

1. The Department will convey by easement to the County the right to develop, operate, repair, and maintain the Trail as a component of the State Trail System. The County accepts the property "as is" on the date of conveyance.
2. The Department represents that it has made reasonable inquiry and has no reason to believe that hazardous waste, noxious waste, or any other condition of the land

subject to this MOU exists that would inhibit the ability of the County to possess and improve the property as contemplated by this MOU. If, however, such prohibitive conditions are discovered, either the Department shall take all steps reasonably necessary to remove such conditions or the intent of this MOU being frustrated, the MOU shall terminate.

3. The Department will work with the County to identify funding sources for the development and repair of the Trail.
4. The Department will designate the Trail as a “State Trail” under section NR 51.73, Wis. Adm. Code. The Trail will be included in any appropriate list of State Trails.
5. The Department will make its Adopt-A-Trail program available to the County. The Department has an application process for groups interested in adopting a section of State Trail. This program is similar to the Department of Transportation’s Adopt-A-Highway program.
6. The Department and the Natural Resources Board, with input from the County, will determine the allowable hunting, fishing, and trapping opportunities on the Property pursuant to section 29.089, Wis. Stats.
7. In the event that the Wisconsin governor declares a state of emergency under s. 323.10, Wis. Stats., or if the President of the United States declares a federal state of emergency under CFR Title 44, Part 206, the Department shall be the claimant for all damages on the Property owned by the Department resulting from said state of emergency.

V. Obligations of the County

1. The County will coordinate naming of the Trail with the Department. Final approval rests with the Department’s Natural Resources Board. The official name of the Trail will end with “State Trail”. [For example, “Wisconsin River State Trail”.] The Department encourages trail naming based on historical references or natural features. For example, the Trail could be named for a geologic feature that it passes or is near. For the benefit of Trail users, it is recommended that Trail naming be consistent for its entire length, regardless of political boundaries.
2. The County, with the assistance of the Department, will coordinate and prepare a plan for the Trail that describes trail management and development within two years of the conveyance of the easement. Specific recreational uses will be determined through the planning process. Per section NR 44.04 (13), Wis. Adm. Code, this plan is not required to comply with Chapter NR 44, Wis. Adm. Code; however, the plan shall be consistent with Chapter NR 44, Wis. Adm. Code, to the extent practicable. The County shall review its Trail plan every 15 years to determine if the plan should be amended, revised or extended for another 15-year period. The County shall take measures to reasonably notify interested persons of said review, and then shall use an appropriate public involvement process to determine or examine issues related to

management and use of the property and the need for plan revision. The plan shall contain a provision providing that it remains in effect until the County takes action to modify it.

3. The plan must include, at a minimum:
 - a. A public notification and participation process allowing for public comments on the draft plan.
 - b. A list of allowed trail uses, including where and when they are allowed (e.g. snowmobiles allowed from Hwy Y to the Main Street trailhead, only when snow cover is 6" or greater). Year-round bicycling is encouraged and may be allowed in conjunction with snowmobiling. Walking must be allowed on the Property at all times (section NR 1.61, Wis. Adm. Code).
 - c. General guidelines regarding the handling of requests for special events (defined in section NR 45.03(21d), Wis. Adm. Code).
 - d. A list of hunting, fishing, and trapping activities and areas as determined by the Department and Natural Resources Board pursuant to section 29.089, Wis. Stats. (shown on a map).
 - e. A map showing locations of anticipated support facilities (e.g. restrooms, parking lots) and use zones.
 - f. Projected development and maintenance costs.
 - g. Plans to address any identified environmentally sensitive or culturally or historically significant areas.
 - h. A set of management alternatives for the Trail, with a preferred alternative (the alternative that will be used) identified.
 - i. An estimated number of users per year.
 - j. The name and address of the office that will be managing the Trail.
 - k. An emergency action plan to include protocols and procedures for responding to reports of potentially hazardous conditions on the Trail.
 - l. The identification of desired vegetation types along the Trail.
4. The County will participate in or conduct public meetings, which are necessary for the establishment and development, management, and improvements of the Trail project, including for any major changes to the trail plan, such as eliminating or adding allowed trail uses or authorizing special events not addressed by the trail plan. Attempts should be made to comply with the intent of Chapter NR 44, Wis. Adm. Code, as it relates to public participation.
5. The County shall provide a copy of the completed plan, with all its exhibits, to the Department.
6. The County, within five years after the conveyance of the easement, will develop the Trail. Thereafter, and during the term of this agreement, the County shall, maintain, repair, and operate the Trail located within the County for recreational purposes, as funding becomes available. Until development occurs, the County will assume all monitoring, enforcement, and maintenance responsibilities on the Property.

7. The County agrees that the development, construction, maintenance, and repair of the Trail will meet or exceed Department trail standards and any applicable standards mandated by state or federal law. The County further agrees that in operating the Trail, the County will comply with all applicable state and federal laws.
8. The County shall comply with statutory inspection requirements in accordance with section 23.115(2), Wis. Stats., further described in Department Manual Code 2527.20, and shall provide the Department with copies of all inspection reports.
9. Vegetative management.
 - a. Trees: if the County has a forestry department or forester, follow the guidance in the DNR Public Forest Lands handbook 2460.5 for establishing and administering timber management on cooperative trails. If the partner does not have a county forester, request assistance from a DNR forester on a government-to-government basis to establish and administer timber management, including commercial sales.
 1. Forest cover. Trees on the Property remain the property of the Department. Any proposed commercial timber sale must be reviewed by the Department. Although cooperative state trails are specifically excluded from forest certification, sustainable forestry practices are encouraged to maintain desired forest cover types. Depending on the desired cover type, different commercial or non-commercial practices may be used. When active management is proposed, the County shall coordinate review of the proposed management activity with appropriate Department staff.
 2. Hazard tree management. Hazard trees should be identified during the biannual property inspections (further described in Section V. 8. herein). If the volume of hazard trees is too large for County staff to handle, it agrees to consider contracting a commercial sale or other approach. Such work shall be coordinated with the Department.
 - b. Non-tree vegetation including saplings, shrubs, and herbaceous vegetation.
 1. Management for routine trail maintenance. A minimum maintained (clear) shoulder of at least 2 feet on either side of the trail tread (the traveled portion of the trail) is recommended. Acceptable maintenance techniques can include mowing, brushing, chainsaw work, and/or pesticide application.
 2. Habitat conversion or establishment. If there is an opportunity to develop or enhance native habitat types, as established in the trail plan, the County will consult with the Department in the development of habitat projects. Such projects may include developing a prairie on a larger block of land within the trail right of way or along the trail corridor. Projects will be considered for approval by the Department if they are not adverse to existing laws or Department policy, and if they do not negatively impact an existing use.
 - c. Pesticide application. Any pesticide application should be in accordance with Department Manual Code 4230.1 concerning DATCP (Department of

Agriculture, Trade and Consumer Protection) certification and Department policy. The Department shall be notified of any proposed pesticide application in early fall of the year preceding the proposed application, to ensure that the required process can be followed for pesticide use on Department lands (Department Manual Code 4230.1). Any pesticide use must be reported to the Department (Department Manual Code 4230.1).

- d. Invasive species.
 1. The County will follow the requirements of the Invasive Species Rule (chapter NR 40, Wis. Adm. Code).
 2. The County will follow best management practices for invasive species to reduce the risk of introducing or spreading invasive species. Where feasible, the County will eradicate infestations of invasive species.
10. The County shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, and/or reinstallation, of the Trail including, without limitation, zoning, building, health, environmental permits or licenses. The County shall indemnify the Department against payment of the costs therefor and against any fines or penalties that may be levied for the County's failure to procure or to comply with such permits or licenses, and the County shall pay any remedial costs to cure violations of federal, state, or local laws. The Department agrees to cooperate with the County in securing any such permits or licenses by providing information and data upon request.
11. The County agrees that any signage or display material relating to the Trail shall clearly identify the property is a State Trail owned by the Department and under the management and control of the County. No commercial advertising shall be allowed on the Property, unless the signage and its placement is in accordance with Department policy. The County may allow signs providing directional information about Trail-related services. No specific business names, commercial logos or fonts, trademarks, or other advertising shall appear in signage within the Trail corridor. The Department reserves the right to remove non-compliant signage located on the Property. In the event Department signage policy is modified, the above section on signage shall automatically reflect the modification.
12. The County, in connection with this MOU, shall open Trail-related facilities to the general public subject to reasonable rules and regulations, fees, and charges, as outlined below for the management and operation of the Trail.
 - A. Rules and regulations.

Pursuant to section NR 45.02, Wis. Adm. Code, the Department retains management, supervision, and control over the Property for the purpose of enforcing Chapter NR 45, Wis. Adm. Code, when needed to protect the public or the Property. Daily routine enforcement remains the responsibility of the County. The County and other local units of government may adopt Chapter NR 45, Wis. Adm. Code provisions by ordinance.
 - B. Admission Fees.

The County must use the Department's trail pass fee program if it charges a fee for use of the Trail. If admission fees are charged, the State Trail Pass, both annual and daily, the conservation patron license, and senior citizen recreation card issued by the Department shall be honored without additional admission charges. The County shall agree to waive all admission fees on State Parks Open House Day, whose date is determined by the Department, and National Trails Day. National Trails Day is the first Saturday in June.

If the County uses the Department's trail pass fee program, the County may retain a commission that must be used for Trail operations and maintenance as provided for in section 27.01 (8m), Wis. Stats. A separate Trail Pass Sales Agreement between the County and the Department will be executed, detailing the sales and remittance procedures. The County may use sub-vendors to sell the passes.

If section 27.01(8) or (8m), Wis. Stats., is modified, this section on admission fees shall automatically reflect the modification.

13. In the exercise of its rights herein, including but not limited to the operation of the Property as a 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 successors or designees.
14. The County may enter into agreement with a Friends Group which meets the criteria in section NR 1.71, Wis. Adm. Code, and Department policy. In recognition of the status of this Trail as a State Trail, the County agrees that the Department shall also be a co-signer of any Friends agreement.
15. The County may enroll volunteers in the Department's Adopt-A-Trail program, in accordance with Department policies and procedures.
16. Any contract between the county and a third party to perform duties authorized by this MOU must bind the third party to the County's obligations under this MOU.
17. The County will indemnify and hold harmless the Department and its employees against all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from the performance of this MOU by the County, its agents, contractors, servants, licensees, permittees, or employees. In case any action or proceeding is brought against the Department or its employees by reason of any such claim, the County, upon notice from the Department, will defend such action or proceeding.

VI. General

1. This MOU is subject to all applicable laws and regulations. The establishment of this Trail is subject to approval by the Natural Resources Board and Governor.

2. This MOU may be revised or amended by mutual written agreement of the Department and the County.
3. The Department must approve, and has sole discretion over, all land transactions, crossings, and easements for the Property, but the County will be the first point of contact for inquiries from the public and/or private entities on these matters. Guidelines relating to easements for driveway and road crossings will be provided to the County. If a request conforms to the guidelines, it will be referred to the Department. If a request does not conform to Department guidelines, the County will deny the request. The Department retains the right to issue other non-conflicting easements, leases, or permits but shall make every effort to refrain from entering into agreements that would physically alter the Trail or its uses. The Department shall retain all proceeds from these transactions.
4. An annual meeting between the County and Department will take place to review development and acquisition progress, operational problems and maintenance standards needing attention and to exchange ideas and information for the good of the Trail project.
5. This MOU shall not be construed as creating a public debt on the part of the Department in contravention of Article VIII, Wisconsin Constitution and all payments or obligations hereunder are subject to the availability of future appropriations.
6. The County assumes complete responsibility for the development, operation, maintenance, and repair of the Trail. The Department has no obligation to develop, operate, maintain, or repair the Trail at any time.
7. This MOU does not create an employment or agency relationship between the Department and the County, any employees or agents of the County, or any third parties.

VII. Termination

1. County. The County may terminate this MOU by providing to Department ninety (90) days written notice of said termination. In the event the County terminates this MOU or the easement from the Department, the County will retain compliance responsibility for any state or federal grant obtained for Trail development and support purposes.
2. Department. The Department may terminate this MOU or the easement with the County in the event that:
 - A. The County breached any term or condition in the MOU or the easement and said breach remains uncorrected for a period of sixty (60) days from the receipt of the Department's written notification of said breach by the County. In the event the County breached any term or condition of this MOU or the easement

from the Department, the County will retain compliance responsibility for any state or federal grant assisted areas.

- B. The Department determines that the continued use of the premises as a Trail would be inconsistent with the management needs or objectives of the Department or the State of Wisconsin. In exercising its termination rights under this provision, the Department shall give the County 180 days notice of termination and reimburse the County for developed improvements, subject to consideration of any state or federal grant funds used in the development of the improvements and the availability of future appropriations. The Department will assume compliance responsibility for any federal grant obtained for Trail development purposes.

IN WITNESS WHEREOF, Department and the County have caused this instrument to be executed in their respective names by their respective duly authorized representatives.

 {COUNTY NAME} COUNTY

By {SIGNATURE} _____ Date
 {NAME AND TITLE OF SIGNER}

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By {SIGNATURE} _____ Date
 {NAME}, Secretary