

MEMORANDUM OF AGREEMENT

BETWEEN

BROWN COUNTY AND VILLAGE OF ALLOUEZ

FOR SNOW REMOVAL ON THE FOX RIVER STATE TRAIL

This Brown County Snow Removal and Winter Maintenance Agreement (“Agreement”) is being made and entered into on the _____ day of _____, 2016 by and between Brown County, a body corporate organized and existing under the laws of Wisconsin, (the “County”) and the Village of Allouez, a Brown County municipality, (“Allouez”) for the purpose of performing winter trail maintenance on the portion of the Fox River State Trail that is located within Allouez’s municipal boundaries on the terms and conditions set forth herein. (Collectively, Allouez and County may be hereinafter referred to as “Parties” or “Party”.)

RECITALS

WHEREAS, the Fox River State Trail (“Fox River Trail”) is a recreational trail that is owned by the State of Wisconsin (“State”) and made part of the state trail system per Wis. Stat., § 23.175 through designation by the Wisconsin Department of Natural Resources (“DNR”) under Wis. Admin. Code § NR 51.73; and

WHEREAS, the DNR, as the agency named by the State to administer the state trail system, has delegated certain Fox River Trail management duties to the County, which include the duty to perform snow removal and other associated winter maintenance thereon; and

WHEREAS, Allouez desires to perform, at no charge to the County, said snow removal and associated winter maintenance (collectively “Snow Removal”) on the portion of the Fox River Trail that is located within its municipal boundaries (“Trail”), and the County desires to delegate such duties to Allouez as a benefit to both the citizens of Allouez and the County as a whole.

NOW THEREFORE, in consideration of the mutual benefits contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. RECITALS.** The recitals are true and correct and are incorporated into this Agreement.
- 2. LOCATION.** The Trail is located from the northern municipal boundary of Allouez south to a point 150 feet south of the southerly municipal boundary of Allouez, including

parcels: AL-4, AL-39, AL-47, AL-49, AL-53, AL-54, AL-52, AL-55 AL-59, AL-64 AL-65, AL-79, AL-104 and 150 feet of the northern portion of parcel ED-80-3.

- 3. SNOW REMOVAL POLICY.** Allouez shall perform Snow Removal on the Trail in accordance with the following:
- a. The Winter Trail Standard, which requires:
 - i. That removal of snow accumulations of greater than one (1) inch occur within 48 hours of the completion of a snow event.
 - ii. That ice and/or slippery conditions be minimized with sand as the primary agent.
 - iii. That inspections be performed routinely at the discretion of Allouez when it is reasonable to assume that the Trail would need to be maintained. These inspections shall be documented by Allouez staff to meet these Winter Trail Standards.
 - b. That snow and ice be removed from a minimum of eight (8) feet width of the Trail, within forty-eight (48) hours of snow or ice accumulation of one (1) inch or greater.
 - c. That accumulations resulting from public street snow removal operations will be removed from the trail by Allouez.
 - d. That, due to limitations of mechanical equipment and irregularities in the Trail, the Trail may not be cleared or maintained to a “dry pavement” standard. Surface irregularities and slippery conditions may exist and Trail users should be aware of these conditions as a user of recreational Trails during the winter season. Users of a recreational Trail during the winter, while snow and ice are present, assume some risk of use due to the nature of snow and ice surfaces being slippery.
 - e. That it is expected that snow can be plowed, blown, swept, dumped, or otherwise removed on the Trail right-of-way. The Trail corridor is a minimum of fifty (50) feet within Allouez, which will provide sufficient space for all snow to be stockpiled adjacent to the Trail and as follows:
 - i. Snowbanks resulting from Trail clearing shall not reach greater than three and one half (3.5) feet tall.
 - ii. Snow shall be plowed to the downhill side of the Trail when possible to reduce melting snow and ice from draining across the Trail.
 - iii. Snow removal and ice control operations shall be performed by trained and skilled Allouez staff, commensurate with industry standards. Every attempt shall be made to limit property damage by equipment and sand.

If damage occurs to the Trail a report must be submitted to Brown County within 5 days of the incident.

- f. That, said duties, along with any other winter maintenance to the Trail hereunder, if performed by Allouez, will be performed with equipment properly identified with municipal license plates and stickers on both sides of the vehicle identifying the agency as Allouez. All equipment will have operational orange strobe lights activated while on the Trail. Equipment will be operated at a safe speed no greater than 15 miles per hour while on the Trail. Operators will yield to Trail users and every attempt will be made to perform Snow Removal duties during low use times.
 - g. That, the Trail be monitored between periods of snowfall or ice accumulation and that any snow or ice that may be deposited or otherwise form on the Trail due to wind-blown snow, melting and freezing or other reasons be removed as necessary to continuously maintain the Winter Trail Standard across the entire width and length of the Trail within the municipal boundaries as outlined on the attached map.
- 4. CONTRACTED WORK.** If a contractor is hired for Snow Removal work, Allouez will provide a written agreement between said contractor and Allouez for final approval by the County. The Brown County Park Director, or designee, must approve the use of said contractor and terms set forth within the aforementioned agreement before the contractor may commence any work hereunder.
- 5. BROWN COUNTY AGREES AS FOLLOWS:**
- a. To allow Allouez to plow, broom, brush, shovel, apply sand or perform related winter maintenance activities on the Trail.
- 6. VILLAGE OF ALLOUEZ AGREES AS FOLLOWS:**
- a. To furnish all labor, materials, supervision, equipment and services as may be necessary to adequately perform the Snow Removal work outlined in Section 4 and further herein.
- 7. TERM.** The term of this Agreement shall be for one (1) year ("Term"). This Agreement shall automatically renew annually, upon the same terms and conditions in effect or upon terms and conditions mutually agreed to in writing by the Parties. This Agreement may be terminated by either Party for any reason by giving sixty (60) days advanced written notice, as defined in Section 11 hereof ("Notice") to the other Party of said termination.
- 8. INDEMNIFICATION.** Allouez hereby agrees to release, indemnify, defend and hold harmless the County, the State and the Department of Natural Resources, along with their respective officials, officers, employees and agents from and against all judgments,

damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions, liabilities and/or causes of action of any type or nature whatsoever, including actual and reasonable attorneys' fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, resulting from or arising out of the performance under this Agreement by Allouez, or Allouez's officers, officials, employees, agent, duly authorized subcontractors or assigns performing Snow Removal services hereunder. In case any action or proceeding is brought against the State of Wisconsin, the Department of Natural Resources, the County or their employees by reason of any such claim, Allouez, upon Notice will defend such action or proceeding. The State of Wisconsin, the Department of Natural Resources and the County do not waive, and specifically reserve their right to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

9. INSURANCE. Allouez shall be solely responsible to meet Allouez's insurance needs as required by the County during the terms of this Agreement or any extension thereof. The Certificate(s) of Insurance, along with endorsements, shall be issued by a company or companies authorized to do business in the State of Wisconsin and shall be satisfactory to the County. Such insurance should be primary. Allouez shall furnish the County with a Certificate of Insurance, along with two endorsements, one naming the State of Wisconsin, the Department of Natural Resources, and Brown County, along with their boards, commissions, agencies, officers, employees and representatives as additional insureds and one endorsement providing the County with thirty (30) days advance written notice of any change, cancellation or non-renewal during the Term of the Agreement. Certificates of Insurance are required to be valid and provided to Brown County Administration, 305 E. Walnut Street, PO Box 23600, Green Bay, WI 54305-3600 or emailed to BC_Administration_Purchasing@co.brown.wi.us throughout the Agreement Term.

10. VENUE AND APPLICABLE LAW. Any lawsuits related to or arising out of disputes under this Agreement shall be commenced and tried in the Courts of Brown County, Wisconsin and the County and Allouez shall submit to the jurisdiction of the Courts for such lawsuits. In all respects, this Agreement and any disputes arising under it shall be governed by the laws of the State of Wisconsin.

11. NOTICES. Any and all Notices and demands shall be in writing delivered in person or by first class mail, registered or certified, postage paid, return receipt requested and addressed to the appropriate Party as follows:

BROWN COUNTY: Matt Kriese
Brown County Parks
1150 Bellevue Street
Green Bay, WI 54302

VILLAGE OF ALLOUEZ: Chris Clark
Allouez Parks, Recreation, and Forestry Dept.
1900 Libal St.
Green Bay, WI 54301

12. AMENDMENTS: This Agreement is the entire agreement between the undersigned Parties and shall only be modified, changed or amended in writing and signed by duly authorized representatives of each Party, which amendment expressly states that it is the intention of the Parties to amend this Agreement.

13. SEVERABILITY: The provisions of this Agreement are severable and if any provision is found to be invalid, unenforceable, or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated unless the effect of holding the provision invalid, unenforceable or void defeats the entire purpose of the Agreement.

14. CONSTRUCTION: All Parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this Agreement or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the Agreement or any portion thereof.

15. SIGNATURE AUTHORITY: The persons signing this Agreement warrant that they have been authorized to enter into this Agreement by and on behalf of their respective Parties and that they have full and complete authority to bind their respective Parties by executing this Agreement.

VILLAGE OF ALLOUEZ

BROWN COUNTY

James F. Rafter, Village President

Troy Streckenbach, County Executive

Date: _____

Date: _____

Debra M. Baenen, Village Clerk