

Memo

To: Village Board
From: Chris Clark, Director of Parks, Recreation, & Forestry
Re: Fox River Trail Winter Snow Removal Agreement
Date: November 20, 2018

Background Information:

The Brown County Parks Department is planning for winter snow and ice removal operations for this coming winter along the length of the Fox River State Recreational Trail from Green Bay through Allouez and DePere. They are requesting financial assistance again this year from the communities that the trail passes through similar to last year.

Brown County will pay for the first \$10,960 for plowing services and the other three communities would be charged accordingly for any charges exceeding that. Brown County Parks will continue to contract with Apple Valley Landscaping for this service and anticipates a slight increase in the estimated costs from last season.

Previous Information/Action:

The Village of Allouez has participated with this partnership for the last two winters.

Budget Item/Funding:

The Village's portion of the plowing costs per the 2018/19 agreement is not to exceed \$5425, up slightly from \$5267 in the '17/'18 agreement. This amount would come from the contingency fund if so needed. The Village was not invoiced in 2018 since the actual invoice for services (\$7600) was less than the threshold (first \$10,700) to be paid by Brown County.

Staff Recommendation:

Staff recommends the village continues to participate in the partnership to maintain the Fox River Trail during the winter.

Attachments:

- Copy of the 2018/19 Memorandum of Understanding

**FOX RIVER STATE TRAIL
WINTER MAINTENANCE COST SHARE MEMORANDUM OF UNDERSTANDING
VILLAGE OF ALLOUEZ, COUNTY OF BROWN, CITY OF DE PERE, AND CITY OF GREEN BAY**

This Memorandum of Understanding (MOU) is entered into this ___ day of _____, 2018, by and between the Village of Allouez (“**Allouez**”), the County of Brown (“**County**”), the City of De Pere (“**De Pere**”) and the City of Green Bay (“**Green Bay**”) for purposes of funding winter maintenance on the Fox River State Trail (“**Trail**”). Hereinafter, these four municipalities may be referred to singularly as “Party” and collectively as “Parties.”

Recitals

WHEREAS, the Trail is a recreational trail that is owned by the State of Wisconsin and that was made part of the State Trail System by the Wisconsin Department of Natural Resources (“DNR”); and,

WHEREAS, the DNR, as the agency named by the State to administer the State Trail System, has delegated certain Trail management rights to the County, e.g., the right to develop, maintain, repair and operate said Trail on lands within Brown County; and,

WHEREAS, the Parties agree that it is vital to partner together to enrich local quality of life, attract and retain talent, offer quality outdoor recreational opportunities and to promote healthy lifestyles year-round; and,

WHEREAS, the Trail is known as a popular recreational trail which travels through all of the Parties’ municipal boundaries; and,

WHEREAS, the collaborative effort outlined in this MOU will encourage year-round biking, running and walking within the urban section of the Trail; and,

WHEREAS, the Parties recognize that providing winter maintenance on the Trail provides benefit to citizens and allows connected access via the Trail to the four municipalities in this MOU; and,

WHEREAS, the three municipalities desire to enter into this MOU with the County, and each agrees to reimburse the County 50% of the total cost of winter maintenance on the Trail based on the length of Trail within each municipality as described below, and including a ‘**not to exceed**’ dollar amount and only after the County expends the first 50% of the estimated contracted amount; and,

NOW THEREFORE, the Parties to this MOU agree as follows:

1. **Recitals.** The above recitals are true, correct and incorporated herein.

2. Purpose. The purpose of this MOU is to collaborate with the municipalities to cost share winter trail maintenance and provide connectivity and additional winter recreational opportunities in County.

3. Location. The winter maintenance, referenced in this agreement, is to be performed on the Trail from a starting point at Porlier and Adams Streets, to an ending point at Heritage Road.

Municipality Trail lengths referred to in this MOU are as follows:

- a. Allouez - 2.94 miles (Marine Street to Fox Point Boat Landing);**
- b. De Pere - 2.61 miles (Fox Point Boat Landing to Heritage Road); and**
- c. Green Bay - .39 miles (Porlier/Adams Street to Marine Street).**

4. Term. This MOU shall become effective in each respective municipality on the date first written above and after each respective municipality executes this Agreement, and shall continue in effect until the termination of this MOU on June 1, 2018.

5. Payment. The County will pay the initial contractor invoices up to \$10,960. Shall winter conditions determine additional winter maintenance is necessary above and beyond \$10,960, the municipalities agree to reimburse Brown County for the Trail winter maintenance costs for plowing and sanding based on the length of trail within each the municipality. The County will invoice each Party for the actual costs of performing the winter trail maintenance in excess of the \$10,960, as described above, by June 1, 2019. Said Trail winter maintenance costs are based on 25 snow plow events of one inch or greater snow accumulation, and 31 sand applications, per year.

Municipality charges shall not exceed the amounts below, but may be less due to winter weather conditions:

- a. Brown County shall fund \$10,960;**
- b. Allouez shall fund a maximum of \$5,425;**
- c. De Pere shall fund a maximum of \$4,822; and**
- d. Green Bay shall fund a maximum of \$712.**

6. Annual Report. No later than June 1, 2019, the County shall provide a report to the other three municipalities documenting 2018-19 plowing and sanding events.

7. Brown County Responsibilities.

- a. The County agrees to publish a Request for Quotes for contractors interested in performing Trail winter maintenance services. The low responsible bidder will be awarded the contract with Brown County.

b. The County agrees to enter into the contract with the selected contractor, to administer the contract with the selected contractor and to provide payment as defined in the contract by and between the County and the selected contractor.

c. The County agrees to abide by the Trail Management Easement entered into with the State of Wisconsin Department of Natural Resources, which limits salt applications.

d. The County shall not invoice the Parties more than the amounts agreed upon in this MOU and will not invoice the Parties until invoices total more than \$10,960.

e. The County will retain Trail administration and management rights, as described in the Trail Management Easement, with the DNR. At no time shall this Agreement be deemed as conveying, transferring or forfeiting the County's Trail authority to another Party.

8. Governing Law. This Agreement shall be deemed to have been made in Brown County, Wisconsin and shall be governed by, construed under and enforced in accordance with the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly, to this Agreement whether sounding in contract or tort, shall be litigated in the Courts of Brown County, Wisconsin. All Parties to this Agreement hereby subject themselves to the jurisdiction of the Courts of Brown County, Wisconsin.

9. Assignment. The rights and obligations of the Parties under this Agreement are personal as between them, and they may not be assigned, transferred or conveyed in any manner by any Party without the prior written consent of all of the other Parties.

10. Waiver. Waiver of a breach or a violation of any provision or term of this Agreement may not be construed to be a waiver of any subsequent breach.

11. Headings. The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.

12. Notice. 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, or delivered by a recognized overnight carrier service with proof of delivery and addressed to all the appropriate party as follows:

THE VILLAGE OF ALLOUEZ: THE COUNTY OF BROWN

Name and title:
Address:
Phone:
Fax:
Email:

Name and title: Matt Kriese
Address: PO Box 23600, Green Bay WI 54305
Phone: 920-448-4464
Fax: 920-448-4054
Email: kriese_mm@co.brown.wi.us

THE CITY OF DE PERE

Name and title:
Address:
Phone:
Fax:
Email:

THE CITY OF GREEN BAY

Name and title:
Address:
Phone:
Fax:
Email:

All other correspondence may be sent by regular mail, fax or email and addressed as noted above. At any time any Party may change their contact information by sending notice as stated above to the other Parties.

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. **Drafting.** 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 document 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 document or any portion thereof.

15. **Authorization.** The persons signing this MOU 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.

16. **Integration.** This MOU contains the entire agreement and understanding concerning the subject matter between the Parties and supersedes and replaces any and all prior negotiations, proposed agreements, and agreements written or oral. Each acknowledges that no other party, nor any agent of any party, has made promise, representation, or warranty whatsoever, expressed or implied, not contained herein, concerning the subject matter hereof, to induce the other party to execute this Agreement; and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.

17. **Entire Agreement.** 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 MOU.

IN WITNESS WHEREOF, the Parties, by their respective authorized agents have caused this Memorandum of Understanding to be executed and entered into, effective as of the date written above and hereto have affixed their respective signatures, as indicated below.

THE VILLAGE OF ALLOUEZ:

By: _____
Name Title Date

THE COUNTY OF BROWN:

By: _____ County Executive
Name Troy Streckenbach Title Date

THE CITY OF DE PERE:

By: _____
Name Title Date

THE CITY OF GREEN BAY:

By: _____
Name Title Date

