

EXHIBIT B

TRAIL AND CONSERVATION EASEMENT

THIS TRAIL AND CONSERVATION EASEMENT (the “Easement”) is made this ____ day of _____, 2018, by and between the City of Madison (hereinafter referred to as the “City”) and the County of Dane, a Wisconsin quasi-municipal corporation (hereinafter referred to as the “County”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Ice Age National Scenic Trail (hereinafter referred to as the “Trail”), extending approximately one thousand miles, from Door County, Wisconsin, to Polk County, Wisconsin, has been recognized by the United States as providing nationally significant scenic, historic, natural and cultural qualities of that glaciated region; and,

WHEREAS, over the past sixty-years, numerous entities, including the City, the County, the State of Wisconsin and the Ice Age Trail Alliance, Inc., have worked together to secure the property interests needed to establish, develop and protect the Trail; and,

WHEREAS, over time, the City has expended significant resources on securing property interests to establish portions of the Trail; and,

WHEREAS, the County has established the Trail as a priority in its Parks and Open Space Plan to acquire lands and conservation easements in order to provide Trail connections through Dane County and to protect the natural, open space, agricultural and conservation qualities and environmentally significant areas associated with the Trail for recreational and open space uses; and,

WHEREAS, in 2018, the City negotiated the purchase of 40 acres of vacant land in the Town of Verona (the “Property”) for \$2,000,000, which will be used to make an important connection in the Trail. At the time of these negotiations, the County agreed to contribute \$500,000 towards these acquisition costs; and,

WHEREAS, the City is the owner in fee simple of the Property, as depicted on attached Exhibit A and legally described as follows:

The Northeast ¼ of the Southwest ¼ of Section 4, Township 6 North, Range 8 East, in the Town of Verona, Dane County, Wisconsin, EXCEPT that part annexed to the City of Madison in instrument #3421152;

WHEREAS, as a condition of acquiring the Property, the City’s use of the Property is subject to certain restrictive covenants (the “Restrictive Covenants”) for a period of thirty (30) years, specifically that the

THIS AREA RESERVED FOR RECORDING DATA

Return: City of Madison
Economic Development Division
Office of Real Estate Services
PO Box 2983
Madison, WI 53701-2983

Tax Parcel Nos.: 062-0608-043-8002-0
062-0608-043-8330-0

City will designate the Property as a conservation park, that the Property will be open to the public and available for Town of Verona residents to the same extent as City of Madison residents, that the City will place a recognition sign within the park at a mutually agreed upon location, and that off-leash dogs will not be allowed in the conservation park, which Restrictive Covenants, the Parties agree, are not inconsistent with the use of the Property for the Trail; and,

WHEREAS, the common law and section 700.40, Wisconsin Statutes recognize “conservation easements” for the purpose of protecting recreational and scenic values for public enjoyment; and,

WHEREAS, the Parties desire and intend to provide for a Trail corridor for use by the general public over and across the Property and to permit the maintenance and improvement of the corridor and to restrict other uses of the Property which would be inconsistent with the purpose of this Easement; and,

WHEREAS, the Parties also agree that the access opportunities granted through this Easement to the general public are compatible with the principal purposes of land conservation and are not inconsistent with the Restrictive Covenants placed upon the Property at the time of the City’s purchase.

NOW THEREFORE, for the sum of \$500,000 and other good and valuable consideration received, the City hereby conveys to the County, its successors and assigns, in perpetuity, a Trail and Conservation Easement over, across and on the entire Property, subject only to those terms and conditions set forth herein, and those Restrictive Covenants imposed upon the City at the time of acquiring the Property.

THE PURPOSE of this Easement is to foster public enjoyment, understanding and respect for the beauty, flora, fauna, geology and health-giving values of the natural surroundings of a trail corridor; to provide for the construction, maintenance and use of the Trail as a footpath by the general public; and to preserve the natural habitat, conservation and open space values of the Property for the benefit of present and future generations.

1. COVENANTS OF THE CITY

- A. The City shall neither use, conduct, nor permit any activity on the Property injurious to the natural values of the Property as described above, and may not transfer, lease, or convey any interest in the Property inconsistent with this Easement.
- B. The City shall neither construct nor place any new building or structure, permanent or mobile, on the Property without the prior written authorization of the County except that the City may construct and install those structures and facilities that are contained in the City’s approved Park Master Plan.
- C. The City shall not subdivide the Property into smaller parcels, whether through legal or de facto subdivision of the Property, including, without limitation, division of the Property through the creation of condominiums or other means. It is the intent of this section to require that the entire Property remain treated as a single, indivisible tract managed for the purposes of this Easement and to prohibit the conveyance of any part except as a part of the entire Property.

- D. The City shall not conduct nor allow any residential, commercial, industrial or mining activities on the Property nor shall any right of passage across or upon the Property be allowed or granted in conjunction with residential, commercial, industrial or mining activity.
- E. No portion of the Property shall be used for dumping, landfills or the storage or deposit of waste material of any kind.
- F. The conditions, restrictions and responsibilities contained herein shall constitute a covenant running with the Property in perpetuity and shall be binding upon the City, its successors and assigns, and all parties holding under them.

2. RESERVED RIGHTS OF THE CITY

- A. Nothing herein shall be construed as limiting the right of the City to sell, give, or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement. The City shall provide the County with at least 30 days written notice before any sale, transfer, lease or conveyance of the Property or any interest therein. The City shall inform any successor-in-interest of the Easement and shall incorporate the terms of this Easement by specific reference to the recording data hereof in any deed or other legal instrument by which it transfers or divests itself of any interest in all or a portion of the Property.
- B. The City may use the Property insofar as such use is consistent with the rights, privileges, restrictions, and covenants contained herein.
- C. The City has the right to establish a Trail corridor across, over and through the Property at a location to be determined by the City and make it available for public use and the right to permit use of the Trail by the general public. Said use shall be limited to access by foot, snowshoe or ski.
- D. The City, its employees, officers, agents, partners, including but not limited to Ice Age Trail Alliance, and contractors reserve the right to lay out, construct, develop, operate, maintain, repair, remove or relocate a meandering trail path; to make topographical changes to the Property for the necessity and convenience of locating the trail and to protect the Property from erosion by the use of bridges, steps, water diversion structures or special trail surface covers or other appropriate measures; to post signs marking the Trail; and to manage vegetation through selective planting or removal of trees or exotic or nuisance plant species, in order to maintain and enhance the scenic, natural and ecological value of the Property.
- E. The City retains the right to prohibit and/or limit public access and use from time to time as deemed necessary by the City for construction and maintenance activities, under special circumstances as may be required to protect and restore environmentally sensitive areas, sites damaged by public use or natural disasters, areas currently undergoing timber management activities (such as harvesting, skidding or hauling, road maintenance, reseeding or replanting), in emergency situations and for public safety reasons, and in other

areas or circumstances where the conservation values and purposes of this Easement could be adversely impacted by public use.

- F. The City and its partners have the right to maintain, - and restore the conservation values of the Property by managing vegetation and wildlife, provided that they are not inconsistent with this Easement. The City's activities may include, but are not limited to: removing, cutting, burning, chemically treating, or otherwise altering trees, shrubs, and herbaceous vegetation for restoration purposes; planting vegetative cover for restoration purposes; and controlling exotic and native invasive species of plants and animals that threaten the conservation values of the Property.
- G. The City has the right to erect, maintain, repair, remove and replace signs on the Property including but not limited to reasonable safety, informational, trail markings, and interpretative signs, and a recognition sign as required by the restrictive covenants. All signs shall be located so as to minimize material adverse consequences to the conservation values and purposes of this Easement to the maximum extent reasonably possible. The County shall have no obligation pursuant to this Easement to establish, mark, maintain, or repair trails.

3. RIGHTS OF THE COUNTY

- A. The County has the right to protect the vegetation, animals, soils, land, water, and other biotic and abiotic components of the Property from impacts adversely affecting the Trail and/or natural values of the Property.
- B. The County, its agents, officers, employees, and permittees, shall have the right of entry to the Property for the purposes of inspection, monitoring and enforcement of the terms and conditions contained herein, provided that such entry shall not unreasonably interfere with the City's use and quiet enjoyment of the Property. The County shall not waive or forfeit its right to take legal action to enforce this easement by any prior failure to act.
- C. The County has the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement. If the County determines that the City is in violation of the terms of this Easement or that a violation is threatened, the County shall give written notice advising the City of the nature and extent of the violation and demanding corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use of activity inconsistent with the purpose of this Easement, to restore such areas or features of the Property so injured. the City shall have thirty (30) days in which to correct the violation. In the event that an ongoing or imminent violation could irreversibly diminish or impair the recreational and/or natural resource qualities of the Property, the County may, without prior notice to the City, seek an injunction or other remedy in a court of competent jurisdiction. The court may require the City to undertake and complete, at the City's sole expense, adequate corrective measures.
- D. The right to enforce by proceedings at law or in equity the terms and conditions of this Easement and to enforce all applicable governmental laws, ordinances, and regulations as

they apply to the general public's use of the Property permitted by the County hereunder.

- E. By direct action of the Dane County Board of Supervisors, the County may release all of its interest in the Easement upon its determination that the Property no longer has any value to the County.
- F. If this Easement is terminated or extinguished, in whole, or in part, and the Property is subsequently sold, conveyed or exchanged pursuant to the agreement the Parties or their successors or assigns, or taken in condemnation, the County shall be entitled to 25% of the proceeds from such sale, exchange or condemnation in recognition of the County's contribution to the City's purchase of the Property.

4. GENERAL PROVISIONS

- A. The terms and conditions of this Easement are deemed permanent and irrevocable and shall run with and bind the land in perpetuity.
- B. The rights, benefits, and obligations in this Easement shall inure to the benefit of and bind the City, its heirs, successors, or assigns.
- C. The terms "the City" and "the County" when used herein shall mean either masculine or feminine, singular or plural, as the case may be, and the successors and assigns of the City and the permitted assigns of the County, and the covenants, terms, conditions or restrictions of this Easement shall be binding upon and inure to the benefit of such successors and assigns and shall continue as a servitude running in perpetuity with the Property. Any and all transferees or assignees of the County will be required to carry out in perpetuity the purposes of this Easement and shall be responsible for the obligations, responsibilities and duties of the County. Any assignee of this Easement, its successors or assigns, shall have the same right to assign this Easement as provided to the County herein.
- D. If any provision of this Easement is found to be invalid, the remainder of the provisions shall not be affected thereby.
- E. Any ambiguity in this Easement shall be construed in a manner which best effectuates conservation and preserves and protects the conservation values of the Property and the establishment of the Trail as described herein.
- F. The Easement as herein defined may be amended only by mutual written agreement by and between the City and the County, or their respective successors or permitted assigns. Any such amendment shall be consistent with the purposes of this Easement and shall not affect other provisions or the enforceability of the Easement. No such modification shall be effective unless recorded in the Dane County Register of Deeds Office.
- G. Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are

attributable to such acts, errors, or omissions including providing its own defense, arising out of this Easement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this Easement.

- H. Non-Discrimination. In the performance of the obligations under this Easement, the Parties agree to abide by their own respective affirmative action plans and in doing so agree not to discriminate, in violation of any state or federal law, against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The parties further agree not to discriminate, in violation of any state or federal law, against any subcontractor or person who offers to subcontract on this Easement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
- I. This Easement shall be construed pursuant to the laws of Wisconsin.
- J. All notices or other writings this easement requires to be given, or which may be given, either party by the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, prepaid and addressed as follows:

To the City: City of Madison Parks Division
210 Martin Luther King Jr. Blvd., Room 104
Madison, WI 53703

To the County: County of Dane, Land & Water Resources
5201 Fen Oak Drive
Madison, WI 53718

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided may be changed by written notice given by such party as above provided.

IN WITNESS WHEREOF, the City grants this Trail and Conservation Easement and has caused this instrument to be executed on its behalf this _____ day of _____, 2018.

CITY OF MADISON

By: _____
Paul R. Soglin, Mayor

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2018, the above-named Paul R. Soglin, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

By: _____
Maribeth Witzel-Behl, City Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2018, the above-named Maribeth Witzel-Behl, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission: _____

Execution of this Easement by the City is authorized by Resolution Enactment No. RES 18-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2018.

