

**AGREEMENT BY AND BETWEEN THE WISCONSIN DEPARTMENT OF
TRANSPORTATION AND THE VILLAGE OF GAYS MILLS
FOR THE MAINTENANCE OF THE BICYCLE /PEDESTRIAN PATH
WITHIN THE RIGHTS-OF-WAY OF STATE HIGHWAY 131
FROM MISTY VALLEY AVENUE TO APPROXIMATELY 500-FEET NORTH OF EMPIRE
AVENUE**

This AGREEMENT for Maintenance of the Gays Mills – TID Trail between the Wisconsin Department of Transportation and Village of Gays Mills is made and entered into this 2nd day of October 2019 by and between the Village of Gays Mills hereinafter called the “Village”, and the State of Wisconsin, Department of Transportation, hereinafter called the “State”. This Agreement shall be effective upon last signature below.

WITNESSETH:

WHEREAS, the State and Village have agreed to the development of bicycle/pedestrian path, hereinafter called the “Path”. The Path is shown on the attached drawing and is described as follows:

The path begins at Misty Valley Avenue, west of WIS 131, and proceeds north parallel to WIS 131 and within WIS 131 right-of way to approximately 500-feet north of Empire Avenue.

Said paths include an area approximately 4 feet on each side of the Path plus any drainage pipes and structures constructed for the Path.

WHEREAS, within said limits the initial construction of the path and appurtenances will be financed and completed by the Village.

WHEREAS, Wis. Stat. Sec. 66.0301 authorizes municipalities, including the Village and the State, to contract with one another for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

AGREEMENT:

NOW, THEREFORE, the Village and the State, in consideration of the mutual covenants herein set forth, and other good and valuable considerations, the receipt of which is hereby acknowledged, agree to make this Intergovernmental Agreement under Wis. Stat. sec. 66.0301 for the purposes stated herein, as follows:

1. **Path Location.** The paved Path general limits are as described above in the first “Whereas” paragraph and shown on the attached exhibits.
2. **Path Construction.** The Path shall consist of an eight-foot asphaltic paved surface (2½” thick) on 10” of crushed gravel with two-foot gravel/turf shoulders generally within the WIS 131 Right-of-Way. The initial construction of the path will be financed and completed by the Village.
3. **Path Lighting.** The Village shall be responsible for the financing, maintenance, rehabilitation and replacement of any Path Lighting.

4. **Path Signing.** Within the said limits any required signage will be financed and installed by the Village. Any additional desired signing, as approved by the state, shall be provided and financed by the Village.
5. **Path Maintenance.** The Village shall maintain the Path, at its own expense. For purposes of this agreement, maintenance shall mean keeping all existing surfaces, signing and marking in good repair, which includes routine sealing of asphalt cracks and pothole repair of asphalt; repair of damage due to unauthorized use, vandalism, graffiti or theft; removing dirt and debris from the path surface; removing litter from the paved surface and nearby adjacent grassed areas; mowing grass areas; keeping any other landscaping in healthy and neat condition; keeping all drainage ditches in good working condition; and keeping drainage structures free of debris and in good repair. The Village shall be responsible for any other maintenance needs that are not listed above and within the Path corridor. Winter maintenance shall be at the discretion of the Village.
6. **Use of Path.** The use of the Path by the Village shall be for bicycle and pedestrian transportation and may also include public access for recreational activities, including bicycling, pedestrian use and skating, as defined in Wis. Stat. sec. 895.52.
7. **Prohibition of Motorized Vehicles.** Use of this Path by motorized vehicles of any type, except as needed for maintenance, rehabilitation or emergency rescue purposes, or under Paragraphs 11 and 14 herein, is prohibited, except for motorized wheelchairs. The Village at its discretion may prohibit electric personal assistive mobility devices, as defined in state statute 340.01 (15pm). Snowmobiles are allowed to cross or run adjacent to the Path unless local ordinance prohibits the use. The Village shall inform the State of snowmobile trail locations adjacent to or crossing any Path before those trails are put in place.
8. **Path Corridor Encroachments.** The Village shall be responsible for keeping the Path corridor right-of-way free of encroachments.
9. **Path Fees.** The Village shall not charge fees for the use of the Path.
10. **Removal of Equipment.** All Path signs, lighting and appurtenances, which remain the property of the Village, shall be removed by the Village, at its own expense, upon termination of the Maintenance Agreement.
11. **Enforcement.** Promulgation and enforcement of noise, littering and loitering restrictions and the prohibition of motorized vehicles on and along the Path and shall be the sole responsibility of the Village. The Village may pass such ordinances and resolutions as it deems appropriate to govern these restrictions on the Path and may use such methods as it deems appropriate to assure compliance with said restrictions. Any other restrictions proposed by the Village shall require written concurrence from the State.
12. **Liability.** The Village shall defend and hold harmless WisDOT and the WisDOT's agents, servants, and employees against all loss, damages, legal expenses and other claims which WisDOT may sustain or become liable for on account of injury to or death of persons, or on account of damage to, loss or destruction of property from activities conducted by WisDOT as part of this Lease and as to itself, any contractor, contractor's employees, subcontractors or agents. Notwithstanding the foregoing, nothing contained within this Lease is intended to be a waiver or estoppel of the Village or its insurer's ability to rely upon the limitations, defenses, and immunities contained within Wisconsin law,

including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05.

13. **Wisconsin Department of Transportation (WisDOT) Property Rights.** This Agreement is not a lease and does not convey or transfer any ownership or rights of ownership in WisDOT right-of-way to the Village. This instrument is a permit and the extent of the permit is to allow the use of the Path temporarily for certain activities as set forth herein. The State retains all rights of property ownership, and only the State can grant an invasion of said ownership rights.
14. The State retains the authority for the issuance of permits to allow a public or privately-owned utility the right to construct, operate, and maintain a utility facility over, across, upon, and within WisDOT right-of-way. If a permit is issued under this paragraph, it shall be a condition of the permit that use of the right-of-way needed for the Path shall not be impaired, the utility permittee shall repair said right-of-way and return it to its pre-existing condition, normal wear and tear considered, as soon as possible.
15. Both WisDOT and the Village shall coordinate with each other on any permitting matter that may have an effect on the path or WisDOT ROW. The coordination, in the form of written correspondence, shall begin within five business days after being contacted by a utility, developer, citizen, etc. regarding any proposed project that requires a permit. Nothing in this section shall override either WisDOT's or the Village's authority to issue permits under their respective maintenance jurisdiction.
16. The State retains full and final authority regarding the sale or disposal of the right-of-way or any portions thereof. Furthermore, this Agreement is subject to existing permits.
17. The State retains the right to close all or any portion of the Path at any time if it needs the right-of-way for future highway improvements or other operational needs, without compensating the Village to relocate the Path should the Village decide to do so.
18. **Term.** The term of this Maintenance Agreement shall be twenty (20) years from the Effective Date. This Agreement shall automatically be renewed under the same terms and conditions for additional one-year terms, unless either party shall give written notice to the contrary to the other party at least 90 days prior to expiration.
19. **Applicability.** If any term, covenant, condition, or provision (or part thereof) of this Agreement, or the application thereof to any part or circumstance, shall at any time or to any extent, be held invalid or unenforceable, the remainder of the Agreement, or the application of such term or provision (or remainder thereof), to parties and circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
20. **Changes.** No term or provision of this Agreement, or any of its attachments, may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by all parties to this Agreement. Consents and approvals required under this instrument may be made or granted by exchange of letters between the parties.
21. **Non-Discrimination.** The parties agree to abide by their own respective non-discrimination policies and procedures during the term of this agreement. Further, the parties agree that this agreement does not subject either party to the other's jurisdiction for the administration of such matters.

22. Entirety. The Agreement together with any documents referred to herein contain the entire Agreement of the parties and supersedes any and all prior Agreements and draft Agreements, or oral understandings between the parties regarding the Path.

23. Notices. Any notice required to be made in writing or any filing required to be made with any party to this Agreement shall be sent to the following addresses:

For the State:

Region Director
WisDOT Southwest Region
2101 Wright Street
Madison, WI 53704


For the Village:

(1) Harry Heisz, Village of Gays Mills, Village President

Village of Gays Mills
16381 Hwy. 131, Suite #1
Gays Mills, WI 54631

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

WISCONSIN DEPARTMENT OF TRANSPORTATION, STATE OF WISCONSIN:



David Vieth
Southwest Region Director
Wisconsin Department of Transportation

06-10-20

Date

VILLAGE OF GAYS MILLS, WISCONSIN:

Approval By:  10-08-2019

Village of Gays Mills Village President Date