

III. C.



DATE: June 1, 2009

TO: Planning & Public Works Committee

FROM: *BM*
Brian McGownd, PWD\CE

SUBJECT: Monarch Chesterfield Levee Trail – Missouri Highways & Transportation Commission License Agreement

As we have previously discussed, it will be necessary for the Monarch Chesterfield Levee Trail to cross underneath Hwy. 40/I-64 at both the east end and west end of Chesterfield Valley. The trail will cross underneath the highway at the bridge spanning Bonhomme Creek on the east end, and underneath the Daniel Boone Bridge which spans the Missouri River on the west end. Both of these crossings will be located on MoDOT right of way, therefore, the City will have to enter into the attached license agreements with MoDOT for both crossings.

As such, Staff requests the Planning & Public Works Committee to recommend approval of the attached ordinance which authorizes the City Administrator to execute the license agreements with the Missouri Highways & Transportation Commission, which will allow the Monarch Chesterfield Levee Trail to cross underneath the commission's right of way, and to forward to City Council for their consideration

If you need additional information or have any questions please advise.

attachments

cc: Mike Herring, City Administrator
Mike Geisel, Director of Planning & Public Works

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION LICENSE AGREEMENTS REGARDING THE CONSTRUCTION OF THE MONARCH CHESTERFIELD LEVEE TRAIL WITHIN THE RIGHT OF WAY OF STATE ROUTE 40.

WHEREAS, the City of Chesterfield has partnered with the Great Rivers Greenway District to construct a circumferential trail around Chesterfield Valley known as the Monarch Chesterfield Levee Trail; and,

WHEREAS, the trail must cross underneath State Route 40 at the existing bridges located on the east and west ends of the Valley; and,

WHEREAS, said crossings will be located within the right of way of State Route 40, which is controlled by the Missouri Highways & Transportation Commission; and,

WHEREAS, the City is required to enter into a license agreement with the Missouri Highways & Transportation Commission for each crossing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, AS FOLLOWS:

Section 1. The City Administrator is hereby authorized to execute and enter into the license agreements on behalf of the City of Chesterfield with the Missouri Highway and Transportation Commission regarding the construction of the Monarch Chesterfield Levee Trail within the right of way of State Route 40. Said agreements are attached hereto as EXHIBIT "A".

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2009.

MAYOR

ATTEST:

CITY CLERK

[FIRST READING HELD: _____]

CCO Form: RW28
Approved: 01/09 (ASB)
Revised:
Modified:

St. Louis COUNTY
ROUTE 40

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION LICENSE AGREEMENT

THIS AGREEMENT is entered into by the **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION** (hereinafter, "Commission") and the **City of Chesterfield** (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains State Route 40 (hereinafter, "Route 40") as part of the State Highway System in St. Louis County, Missouri;

WHEREAS, the City owns and operates the Monarch Chesterfield Levee Trail (hereinafter, "Trail") located throughout the area, including those portions of the Trail laying outside of the Commission's right of way limits of Route 40 at highway centerline station 301+50;

WHEREAS, the City desires to use that portion of the Commission right of way limits of Route 40 at highway centerline station 301+50, for the users of the Trail to cross Commission right of way when traveling on those portions of the Trail laying outside the said Commission right of way limits;

WHEREAS, the Commission agrees to allow the City to use Commission property for the purposes, and subject to the terms and conditions, herein stated.

NOW, THEREFORE, in consideration of the promises, covenants and representations in this Agreement, the parties agree as follows:

(1) LICENSE GRANTED: The Commission hereby grants the City, its successors and assigns, a non-exclusive right to use that portion of the Commission right of way property across Route 40 at the location described on Exhibit "A" for the users of the Trail to cross the said Commission property to reach the point where the trail resumes, while traveling from one trail end to the other trail end outside the Commission right of way limits (hereinafter, "Trail Connector").

(2) CONSIDERATION FOR THIS LICENSE: The Commission grants this license freely and without charge, based on the City's express agreement to comply with the terms and conditions of this Agreement. This license is revocable by the

Commission through its Missouri Department of Transportation (MoDOT) representatives at any time, with or without cause; and this license is automatically revoked by operation of law if the City violates any term or condition of this Agreement. The conditions of this License are:

(A) The license is conditioned on pedestrian or bicycle use of this area only.

(B) Use of the Commission right of way is prohibited in times of floodwaters on the Trail Connector.

(C) There will be no public park or recreational use of this land.

(D) There will be no dedication of the Commission right of way for outdoor recreational use.

(E) There will be posted on each end of the Commission right of way limits of Route 40 at highway centerline station 301+50 a sign stating that the Monarch Chesterfield Levee Trail has ended, however, the trail travelers may cross the Commission right of way to reach the point where the trail resumes.

(3) WORK BY THE City: The City shall construct an asphalt surface on the Trail Connector through in the Commission right of way limits of Route 40 at highway centerline station 301+50, pursuant to the plans and specifications as referred to herein, in order to provide a safe crossing of Route 40 for their pedestrian / bicycle trail travelers. The Commission hereby grants to the City, its successors and assigns a non-exclusive license to use such additional space adjacent to the Trail Connector as may be reasonably necessary for working room during the period that the Trail Connector is under construction and for maintenance of the Trail Connector thereafter. Further, it is the intent of the Commission that this Agreement and the license granted hereby shall constitute a right to non-exclusive occupancy and use of the Trail Connector by the City until revoked or terminated by the Commission. Further, the City understands that they are using this Trail Connector at their own risk. The Commission reserves the right of way for the purposes originally obtained during acquisition. This non-exclusive license prohibits conversion of the property to a 4(F) or 6(F) property as stated in the Code of Federal Regulations 23CFR771.135. It is expressly understood and agreed that the primary purpose of the property which is the subject matter of this agreement shall remain for state highway purposes.

(4) CERTIFICATES/PERMITS: The City's Engineer will complete and provide the necessary permits and the no-rise certificate, which will certify that the proposed concrete surface will cause "no rise" in the 100-year flood elevation.

(5) TRAIL CONNECTOR DESIGN: KDG, consulting engineers, and Pona & Associates, architect, have prepared final plans and final specifications for the Trail Connector to be constructed by the City. The Trail Connector is designed to meet

requirements of AASHTO, ADA, and Commission standards. The City shall submit to Commission's District Six Engineer (hereinafter, "District Engineer") the final plans and specifications for the Trail Connector for written approval of the District Engineer subject to the concurrence of the Federal Highway Administration (hereinafter, "FHWA") before any construction can begin over the Commission right of way. The general design and location of the Trail Connector is shown on Exhibit "B" which is attached to this Agreement and incorporated herein by reference.

The Commission shall either approve or disapprove the final plans and specifications for the Trail Connector within thirty (30) days of receipt from the City. The Commission, having no authority over FHWA approval measures, makes no representation as to the amount of time necessary to obtain FHWA concurrence to approval of the final plans and specifications. However, the Commission will promptly cooperate with and provide all information within its control to the FHWA in order to expedite the approval process.

After written approval is obtained from the Commission and upon proper application by the City, the Commission shall issue, through its District Engineer or the District Engineer's authorized representative, any permits necessary for the City to perform the work contemplated herein. Any significant revision in the design or construction of the Trail Connector shall receive prior written approval of the Commission subject to concurrence by the FHWA. The Trail Connector shall be constructed in accordance with the plans and specifications to the satisfaction of the District Engineer or the District Engineer's authorized agents.

(6) PLAN SHEET: The plan sheet showing the property line subject to this license is attached to this Agreement as Exhibit "C" and incorporated herein by reference.

(7) CONSTRUCTION CONTRACTOR: The Commission acknowledges that the City will enter into a construction contract with an approved Contractor (hereinafter, "Contractor") to construct the Trail Connector Improvements in accordance with the approved plans and specifications. The City shall cause Contractor to submit appropriate documentation to the Commission, to include the following provisions:

(A) Commission Inspection: The Commission's agents and employees will be authorized to inspect the work on the Trail Connector and to approve or disapprove such work in the same manner as if the construction contract has been entered into between the Contractor and the State of Missouri acting by and through the Commission. The Commission agrees that all such inspections shall be conducted in a timely and reasonable manner.

(B) Responsible Party for Payment: The Contractor will look solely to the City for payments pursuant to the construction contract, including, but not limited to payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof, and confirming that Contractor shall have no claim rights

against the Commission, its employees, agents, successors, or assigns.

(C) Construction Bonds: The City shall acquire from the Contractor and shall deliver, prior to commencement of work on the Trail Connector, executed copies of Contractor's performance and payment bonds from commercial surety companies qualified and authorized to do business in Missouri, each in a penal amount equal to the contract sum, assuring the City and the Commission, which shall be named as obligees therein, as their interests may appear, of (1) performance of all contractual obligations, and (2) payment for all related labor, materials, and costs. Such bonds may be issued as part of performance and payment bonds on construction for work other than the Trail Connector. The performance and payment bond requirement does not render the Trail Connector construction project a public works project.

(8) RESTORATION OF COMMISSION RIGHT OF WAY: At all times during the construction or maintenance of the Trail Connector, the City and Contractor shall construct and maintain the Trail Connector in a manner that will not injure or damage the paved highway facility area or any of Commission property adjacent thereto, unless as specified herein. After construction of the Trail Connector, the City will restore the unpaved right of way to its original condition, as determined by the District Engineer. Disturbed areas will be fine graded, seeded, mulched or sodded by the City.

(9) TRAIL CONNECTOR COST: The City shall construct and maintain the Trail Connector at its own cost and expense in accordance with the Final plans and final specifications as approved by the Commission and the FHWA. If and when the highway is expanded, the City is fully responsible for cost of the upgrades to the Trail Connector.

(10) DURATION OF LICENSE: The Commission and the City agree that this license and all rights of entry granted hereunder shall terminate and no longer be in effect no later than sunset on _____, 20___. We will fill the date when we get closer to signing the agreement. Probably will be for 10 years.

(11) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and the City as partners in a partnership or joint venture for any purpose whatsoever.

(12) NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY: The Commission states that to the best of its knowledge and belief, there has been no generation, transportation, storage, treatment, disposal, release, leakage, spillage or emission of any hazardous or toxic substance or material or any aboveground or underground petroleum product contamination on the subject property during the Commission's ownership of the property, and the Commission's representatives are not aware of the presence of any such hazardous or toxic substance or material, or petroleum product contamination, on the subject site. The Commission makes no warranty or representation concerning the possibility of or absence of, concealed property contamination by such substances or materials, and the

City assumes the risk of their presence, unknown and undetected. If the City discovers actual or potential hazardous or toxic substances or materials, or petroleum contamination on the subject property, the City is requested to leave the property and notify the Commission's MoDOT representatives immediately.

(13) HUMAN REMAINS, SACRED OBJECTS AND ARTIFACTS: If human remains, or Native American or other sacred objects, artifacts or items of value are encountered during the use of the Trail Connector, their treatment will be handled in accordance with Sections 194.400 to 194.410, RSMo, as amended. There are no human remains, sacred objects, artifacts or other items of value known to be on the subject Trail Connector, to the best knowledge of Commission's MoDOT representatives. However, if the City finds any human remains, sacred objects, artifacts, or other items of value on the subject property, the City shall immediately cease the use of the Trail Connector and contact the Cultural Resources section of the Project Development Unit at MoDOT.

(14) ASSIGNMENT OF RIGHTS UPON DEFAULT, COMMISSION OPTION: If the City defaults and abandons the Trail Connector construction project, the Commission has the right, at its discretion, to complete construction of the Trail Connector or demolish the structure. The Commission shall have the right to charge all payments associated with and costs of construction or demolition to the City. Such assignment is at the option of the Commission, so that the Commission, if it elects, may compel performance and payments by Contractor (or a substitute contractor) in compliance with the construction contract as secured by the required surety bonds.

(15) TRAFFIC CONTROL PLAN, SIGNING AND SCHEDULING OF CONSTRUCTION: The City agrees to provide to the District Engineer a traffic control plan for handling traffic during the contemplated construction. The City agrees to provide construction signing in compliance with the Manual on Uniform Traffic Control Devices. This Agreement is conditioned upon written District Engineer approval of the traffic control plan and any revisions or modifications to the plan before construction may begin. All construction shall be scheduled to minimize disruption of the traffic flow. Any lane closure shall be scheduled during nonpeak hours except in the case of an emergency.

(16) MAINTENANCE AND REPAIR: At all times during the construction of the Trail Connector and after its completion, the site of the Trail Connector and all related structures and approaches will be maintained by and at the expense of the City so as to assure that these structures and the area within, above and beside Commission's right of way will be kept in good condition as to safety, use and appearance and such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the use of or access to the Commission's state highway system. The City's maintenance requirements herein shall be limited to the maintenance required for the use of the Trail Connector as provided for herein. Notwithstanding anything herein to the contrary, the City shall have no maintenance requirements with regard to the paved highway area on Commission right of way, except for cleaning trash or items

thrown from the Trail Connector.

(17) THE COMMISSION ACTION IF THERE IS FAILURE TO MAINTAIN PROPOSED STRUCTURE: In the event the City fails to meet its maintenance obligations set forth in this Agreement, the Commission or its contractors, agents and employees shall have the authority, but not a duty or obligation, to maintain the facility as the Commission deems necessary. If the City fails to begin making repairs within seventy-two (72) hours of receiving written notice or fails to continue with the repairs in a diligent manner, the maintenance work may be performed by the Commission, unless the District Engineer or his/her authorized representative determines that an actual or potential emergency exists requiring immediate repairs. Any expenses incurred by or on behalf of the Commission in performing the maintenance work described in this section shall be the debt of and shall be chargeable to the City.

(18) REQUIRED INSPECTIONS OF STRUCTURE:

(A) Upon completion of the construction of any structure under the Commission's right of way, the City, and any successors and assigns in interest of the City, shall be required to have scheduled inspections of said structure to insure the safety of the traveling public.

(B) The City shall be responsible for promptly submitting all required written inspection reports to the following: (1) To the Commission District Engineer having responsibility for the roadway above or under the Proposed Structure; (2) To the Commission's State Bridge Maintenance Engineer, located in the headquarters office of the Commission in Jefferson City Missouri.

(19) INDEMNIFICATION: The City shall be responsible for injury or damages as a result of the construction, use or maintenance of the Trail Connector. In addition to the liability imposed upon the City on the account of personal injury, bodily injury, including death or property damage suffered as a result of the construction, use and/or maintenance of the Trail Connector, the City assumes the obligation to save the Commission, including its agents, employees and assigns, harmless and to indemnify the Commission, including its agents, employees and assigns for all liability, loss, cost and expense, including legal fees, arising out of the construction, use and/or maintenance of the Trail Connector including any claims for increased flooding due to reduced waterway within the box culvert. The duty to indemnify, defend and hold harmless the Commission and others as set forth in this section is assumed by the City as a contractual obligation in return for the grant of this license. The City's duty to indemnify, defend and hold harmless the Commission and others as set forth in this section does not create nor give any rights to persons or entities not parties to this Agreement. It is the intent of the parties that the Commission is not to assume any liability whatsoever for the City's utilization of the Trail Connector for the aforementioned permitted activity.

In the event the Commission receives notice of any claim against it related to or arising out of the Trail Connector, Commission will promptly notify the City in writing, attaching a copy of such claim or summarizing its content and the name of the claimant, if not in writing. The City shall, through legal counsel of its choosing, proceed to defend the Commission, its members, employees, officers and agents from such claims and the Commission will fully cooperate with the City and its attorneys with such defense. This obligation to indemnify and defend shall not be deemed to include the intentional or negligent misconduct of the Commission, its members, officers, agents and employees or any of the other "named entities" referred to herein.

(20) LIABILITY INSURANCE: The City agrees to provide the Commission with liability insurance to protect the Commission respecting defense and payment of any claim arising out of the construction, use and/or maintenance of the Trail Connector, not caused by or as a result of any negligent, reckless, or intentional act of the Commission. Such insurance protection of the Commission shall be in the minimum limits of Three Hundred and Eighty-Five Thousand Dollars (\$385,000) per person and Two Million Five Hundred Thousand Dollars (\$2,500,000) per occurrence and hereafter as those limits may be increased under RSMo Section 537.600. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits of that insurance coverage which shall be as specified or adjusted periodically in a written notice from the Commission to the City.

Each policy shall name as the insured the Commission, the Missouri Department of Transportation, and their members, agents, officers and employees, who are collectively described in this section below as "the named entities". At the City's election, the insurance required by this section may be included in one or more policies obtained by or on behalf of the City naming another party or parties as insured also. However, if the City elects to insure more than the named entities in any one policy, that policy shall contain a severability of interests clause providing that the policy limits shall apply to each insured separately as their interests may conflict or be consistent, and regardless of whether the Commission shall be furnished with a certificate of policy showing such coverage to be in effect before any work shall commence on the Trail Connector and after completion of the Trail Connector Improvements as appropriate.

(21) ASSUMPTION OF RISK AND RELEASE:

(A) ASSUMPTION OF RISK: The City, by signing this license agreement, acknowledges that it has carefully read this legal document, and that it understands that the Commission property has vehicular traffic and other potential hazards on it that cannot reasonably be protected against, or warned of, in advance. By signing this license agreement, the City agrees to comply with the safety instructions it receives in this document and from MoDOT employees; the City acknowledges the existence of these and other risks on Commission property, and agrees to assume these risks by accepting this license, and using the Commission's right of way for the activity permitted herein.

(B) RELEASE: Voluntarily and knowingly, the City does for itself and for its heirs, predecessors, successors, officers, agents, and assigns, hereby fully forever remise, release, quitclaim, and discharge the Commission, its predecessors, successors, assigns, and all of its past, present and future officials, commissioners, employees, agents, counsel, and servants whether or not known as well as all persons, or organizations in privity with the Commission from any and all actions, causes of action, damages, claims, liability, responsibility, and demands whatsoever, in law or in equity, or otherwise, arising out of or in connection with the City's use of the Trail Connector for the duration of this license. This release includes all actions or omissions, whether negligent or not, of the Commission, its predecessors, successors, assigns, and all of its past, present and future officials, commissioners, employees, agents, counsel, and servants and this release also includes a release of said Commission regarding the known and unknown physical condition of the premises.

(22) LICENSE REVOCABLE – NO ASSIGNMENT: This license is revocable by the Commission or any appropriate MoDOT official if the City acts in an unsafe manner, or negligently, or refuses to follow safety instructions of MoDOT officials, or in any way breaches the terms of this license agreement. The City understands that it shall not assign or delegate any interest in this Agreement and shall not transfer any interest in or use of this license to another. This license is granted solely to the City and to no other person or entity.

(23) REVOCATION OF AGREEMENT: This license granted in this Agreement is at the pleasure or discretion of the Commission. The occurrence of any one of the following shall constitute a default by the City under the terms of this Agreement and, at Commission discretion, may result in revocation of this Agreement.

(A) Failure to Construct the Trail Connector as Approved: The Trail Connector is not completed in compliance with the plans and specifications approved or approved as modified by the Commission or the FHWA;

(B) Nonuse or Abandonment of Trail Connector: The Trail Connector ceases to be used for the purposes stated herein, or is abandoned;

(C) Damage or Disrepair: The Trail Connector is damaged or falls into disrepair, such that it becomes structurally unsound or unsafe to be used for the purpose for which it was built, and it cannot be repaired or the City will not repair the Trail Connector to a condition satisfactory to the Commission or the FHWA;

(D) Violation of Agreement: The City violates any term of this Agreement;

(E) Change in Use: The City changes or attempts to change the use or purpose of the Trail Connector, without prior written approval of the Commission, with the concurrence of the FHWA;

(F) Violation of Laws: The City constructs, operates, uses or maintains the Trail Connector or any other structure within the Commission's subject property in violation of any state or federal laws or regulations which are applicable at that time, but only after notice is given by the Commission specifying the violation and giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time;

(G) Failure to Pay Debts: The City fails to pay its debts or liabilities to the Commission under this Agreement;

(H) Failure to Maintain Insurance: The City fails to maintain insurance as required by this Agreement;

(I) Void or Invalid Agreement: This Agreement, or any material portion thereof is deemed void or invalid by a court of competent jurisdiction.

(J) Redesign, Relocation, or Alteration of Highway: In the event that the Commission should find that it is necessary to redesign, relocate, or alter the highway at this location, the Commission, at its sole discretion, may terminate this license. Further, should the Commission find that changes should be made at this location, but does not desire to terminate this agreement, the costs attributable to the City's usage shall be at the City's expense.

(24) RIGHT TO ENTER UPON THE TRAIL CONNECTOR:

(A) During Construction: The Commission and FHWA employees and agents shall have the right to enter upon, inspect and approve all work, materials and equipment on or at the site of the Trail Connector during its construction, at such time as Contractor's employees or the City's employees may be present, without prior notice to or approval of Contractor or the City.

(B) During Maintenance, Repair or Reconstruction: The Commission and FHWA employees and agents shall have the right to enter upon the Trail Connector and to inspect and approve all work, materials and equipment there, during any structural or external maintenance, repair or reconstruction of the Trail Connector, at such times as the City's employees or agents may be present, without prior notice to or approval of the City.

(C) Inspections: The Commission and FHWA employees and agents shall have the right to make periodic inspections of the Trail Connector when they deem such inspections necessary or advisable, upon not less than one week's advance written notice to the City, stating the time, location and purpose of the planned inspection.

(D) Emergency or Dangerous Condition: In the event of an emergency, or when the District Engineer or Commission's other authorized representative(s) have

determined that a condition may exist within, on or adjacent to the Trail Connector which represents an actual or potential danger to the traveling public, Commission, the FHWA, and their authorized agents and employees may immediately enter upon and within the Trail Connector to inspect. The Commission may request the City to repair; or where appropriate, may perform all repairs by itself or through its contractors, and charge to and collect the cost of repair from the City.

(25) EXTERIOR SURFACE MATERIAL: The exterior surface of the Trail Connector shall be a non-reflective material, which shall be submitted to the District Engineer for approval prior to commencement of construction.

(26) ADVERTISING RESTRICTIONS: No billboards or advertising is to be placed on or over the Commission's right of way or airspace, either within, on, attached to or apart from the Trail Connector.

(27) MAINTENANCE PERMIT: Any maintenance performed on the exterior of the Trail Connector shall require a permit to be issued by the District Engineer. Maintenance of the Trail Connector within the roadway limits may require proper lane closures as specified in the Manual on Uniform Traffic Control Devices or as directed by the District Engineer. Any lane closure shall be scheduled during nonpeak hours except in the case of an emergency.

(28) OPPORTUNITY TO CURE: As to any default described in paragraph (23) above, same shall not be a basis of terminating or revoking this Agreement until written notice is delivered to the City specifying the default with particularity, giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time.

(29) REMOVAL OF THE TRAIL CONNECTOR: In the event this Agreement is revoked and the Commission deems it necessary to request the removal of the Trail Connector Improvement, the removal shall be accomplished by a responsible party, as determined by the Commission, in a manner prescribed by the Commission, with all costs and expenses associated with the Trail Connector removal paid by the City. The Commission hereby consents to the removal of the Trail Connector by the City or its agents at any time, provided that such removal shall be accomplished by a responsible party, as determined by the Commission, in a manner prescribed by the Commission, with all costs and expenses associated with the removal paid by the City.

(30) UTILITY RELOCATION: With respect to any utility facilities requiring relocation or adjustment in connection with the herein contemplated construction, the City agrees that said relocation or adjustment shall be in accordance with the detailed plans as approved by the Commission with all costs and expenses associated with the utility relocation or adjustment paid by the City.

(31) NONDISCRIMINATION: The City, for itself, its representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby

covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, disability, sex or age shall be denied the benefits of or otherwise be subjected to discrimination in the construction or use of the City facilities served by the Trail Connector.

(32) PERSONS AUTHORIZED TO USE THE TRAIL CONNECTOR: The City, for itself, its representatives, successors in interest and assigns does hereby covenant and agreed as a covenant running with the property that access to the Trail Connector shall be limited to the Commission and its representatives, the City, its representatives, successors in interest, and assigns, and each of their employees, officers, agents, contractors, subcontractors, guests and invitees.

(33) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(34) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(35) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or district of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(36) SURVIVABILITY: The City's obligation to the Commission under this Agreement shall survive the completion of the terms of this Agreement.

(37) DEFENSE: This Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding arising out of, or relating to, or having anything to do with, any and all claims, counterclaims, issues, defenses or other matters released and discharged by this Agreement. This Agreement may also be used to abate any such action or other proceedings and as the basis of a counterclaim for damages.

(38) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the state of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(39) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(40) AUTHORITY TO GRANT LICENSE: The parties enter into this Agreement with full understanding that the Commission, to the best of its knowledge and belief, has the authority to grant this license. The Commission makes no representation that it has full fee simple title to the right of way which is the subject of

this Agreement. In the event this Agreement is rendered null and void based upon a determination that the Commission did not have the authority to grant this license on the subject right of way, the Commission will not be responsible for any damages, costs or other expenses incurred by the City in connection with this Agreement.

(41) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To _____ of _____, Missouri:
(Address)
(Phone)

- (B) To the Commission:
(Address)
(Phone)

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(42) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by _____ of _____ this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

**MISSOURI HIGHWAYS AND
MISSOURI
TRANSPORTATION COMMISSION**

_____ OF _____,

By: _____

By: _____

Title _____

Title _____

Attest: (SEAL)

Attest: (SEAL)

Secretary to the Commission

By: _____
Title: _____

Approved as to Form:

Approved as to Form:

Commission Counsel

By: _____
Title: _____

CCO Form: RW28
Approved: 01/09 (ASB)
Revised:
Modified:

St. Louis COUNTY
ROUTE 40

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
LICENSE AGREEMENT**

THIS AGREEMENT is entered into by the **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION** (hereinafter, "Commission") and the **City of Chesterfield** (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains State Route 40 (hereinafter, "Route 40") as part of the State Highway System in St. Louis County, Missouri;

WHEREAS, the City owns and operates the Monarch Chesterfield Levee Trail (hereinafter, "Trail") located throughout the area, including those portions of the Trail laying outside of the Commission's right of way limits of Route 40 at highway centerline station 36+00;

WHEREAS, the City desires to use that portion of the Commission right of way limits of Route 40 at highway centerline station 36+00, for the users of the Trail to cross Commission right of way when traveling on those portions of the Trail laying outside the said Commission right of way limits;

WHEREAS, the Commission agrees to allow the City to use Commission property for the purposes, and subject to the terms and conditions, herein stated.

NOW, THEREFORE, in consideration of the promises, covenants and representations in this Agreement, the parties agree as follows:

(1) LICENSE GRANTED: The Commission hereby grants the City, its successors and assigns, a non-exclusive right to use that portion of the Commission right of way property across Route 40 at the location described on Exhibit "A" for the users of the Trail to cross the said Commission property to reach the point where the trail resumes, while traveling from one trail end to the other trail end outside the Commission right of way limits (hereinafter, "Trail Connector").

(2) CONSIDERATION FOR THIS LICENSE: The Commission grants this license freely and without charge, based on the City's express agreement to comply with the terms and conditions of this Agreement. This license is revocable by the

Commission through its Missouri Department of Transportation (MoDOT) representatives at any time, with or without cause; and this license is automatically revoked by operation of law if the City violates any term or condition of this Agreement. The conditions of this License are:

(A) The license is conditioned on pedestrian or bicycle use of this area only.

(B) Use of the Commission right of way is prohibited in times of floodwaters on the Trail Connector.

(C) There will be no public park or recreational use of this land.

(D) There will be no dedication of the Commission right of way for outdoor recreational use.

(E) There will be posted on each end of the Commission right of way limits of Route 40 at highway centerline station 36+00 a sign stating that the Monarch Chesterfield Levee Trail has ended, however, the trail travelers may cross the Commission right of way to reach the point where the trail resumes.

(3) WORK BY THE City: The City shall construct an asphalt surface on the Trail Connector through in the Commission right of way limits of Route 40 at highway centerline station 36+00, pursuant to the plans and specifications as referred to herein, in order to provide a safe crossing of Route 40 for their pedestrian / bicycle trail travelers. The Commission hereby grants to the City, its successors and assigns a non-exclusive license to use such additional space adjacent to the Trail Connector as may be reasonably necessary for working room during the period that the Trail Connector is under construction and for maintenance of the Trail Connector thereafter. Further, it is the intent of the Commission that this Agreement and the license granted hereby shall constitute a right to non-exclusive occupancy and use of the Trail Connector by the City until revoked or terminated by the Commission. Further, the City understands that they are using this Trail Connector at their own risk. The Commission reserves the right of way for the purposes originally obtained during acquisition. This non-exclusive license prohibits conversion of the property to a 4(F) or 6(F) property as stated in the Code of Federal Regulations 23CFR771.135. It is expressly understood and agreed that the primary purpose of the property which is the subject matter of this agreement shall remain for state highway purposes.

(4) CERTIFICATES/PERMITS: The City's Engineer will complete and provide the necessary permits and the no-rise certificate, which will certify that the proposed concrete surface will cause "no rise" in the 100-year flood elevation.

(5) TRAIL CONNECTOR DESIGN: KDG, consulting engineers, and Pona & Associates, architect, have prepared final plans and final specifications for the Trail Connector to be constructed by the City. The Trail Connector is designed to meet

requirements of AASHTO, ADA, and Commission standards. The City shall submit to Commission's District Six Engineer (hereinafter, "District Engineer") the final plans and specifications for the Trail Connector for written approval of the District Engineer subject to the concurrence of the Federal Highway Administration (hereinafter, "FHWA") before any construction can begin over the Commission right of way. The general design and location of the Trail Connector is shown on Exhibit "B" which is attached to this Agreement and incorporated herein by reference.

The Commission shall either approve or disapprove the final plans and specifications for the Trail Connector within thirty (30) days of receipt from the City. The Commission, having no authority over FHWA approval measures, makes no representation as to the amount of time necessary to obtain FHWA concurrence to approval of the final plans and specifications. However, the Commission will promptly cooperate with and provide all information within its control to the FHWA in order to expedite the approval process.

After written approval is obtained from the Commission and upon proper application by the City, the Commission shall issue, through its District Engineer or the District Engineer's authorized representative, any permits necessary for the City to perform the work contemplated herein. Any significant revision in the design or construction of the Trail Connector shall receive prior written approval of the Commission subject to concurrence by the FHWA. The Trail Connector shall be constructed in accordance with the plans and specifications to the satisfaction of the District Engineer or the District Engineer's authorized agents.

(6) PLAN SHEET: The plan sheet showing the property line subject to this license is attached to this Agreement as Exhibit "C" and incorporated herein by reference.

(7) CONSTRUCTION CONTRACTOR: The Commission acknowledges that the City will enter into a construction contract with an approved Contractor (hereinafter, "Contractor") to construct the Trail Connector Improvements in accordance with the approved plans and specifications. The City shall cause Contractor to submit appropriate documentation to the Commission, to include the following provisions:

(A) Commission Inspection: The Commission's agents and employees will be authorized to inspect the work on the Trail Connector and to approve or disapprove such work in the same manner as if the construction contract has been entered into between the Contractor and the State of Missouri acting by and through the Commission. The Commission agrees that all such inspections shall be conducted in a timely and reasonable manner.

(B) Responsible Party for Payment: The Contractor will look solely to the City for payments pursuant to the construction contract, including, but not limited to payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof, and confirming that Contractor shall have no claim rights

against the Commission, its employees, agents, successors, or assigns.

(C) Construction Bonds: The City shall acquire from the Contractor and shall deliver, prior to commencement of work on the Trail Connector, executed copies of Contractor's performance and payment bonds from commercial surety companies qualified and authorized to do business in Missouri, each in a penal amount equal to the contract sum, assuring the City and the Commission, which shall be named as obligees therein, as their interests may appear, of (1) performance of all contractual obligations, and (2) payment for all related labor, materials, and costs. Such bonds may be issued as part of performance and payment bonds on construction for work other than the Trail Connector. The performance and payment bond requirement does not render the Trail Connector construction project a public works project.

(8) RESTORATION OF COMMISSION RIGHT OF WAY: At all times during the construction or maintenance of the Trail Connector, the City and Contractor shall construct and maintain the Trail Connector in a manner that will not injure or damage the paved highway facility area or any of Commission property adjacent thereto, unless as specified herein. After construction of the Trail Connector, the City will restore the unpaved right of way to its original condition, as determined by the District Engineer. Disturbed areas will be fine graded, seeded, mulched or sodded by the City.

(9) TRAIL CONNECTOR COST: The City shall construct and maintain the Trail Connector at its own cost and expense in accordance with the Final plans and final specifications as approved by the Commission and the FHWA. If and when the highway is expanded, the City is fully responsible for cost of the upgrades to the Trail Connector.

(10) DURATION OF LICENSE: The Commission and the City agree that this license and all rights of entry granted hereunder shall terminate and no longer be in effect no later than sunset on _____, 20___. We will fill the date when we get closer to signing the agreement. Probably will be for 10 years.

(11) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission and the City as partners in a partnership or joint venture for any purpose whatsoever.

(12) NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY: The Commission states that to the best of its knowledge and belief, there has been no generation, transportation, storage, treatment, disposal, release, leakage, spillage or emission of any hazardous or toxic substance or material or any aboveground or underground petroleum product contamination on the subject property during the Commission's ownership of the property, and the Commission's representatives are not aware of the presence of any such hazardous or toxic substance or material, or petroleum product contamination, on the subject site. The Commission makes no warranty or representation concerning the possibility of or absence of, concealed property contamination by such substances or materials, and the

City assumes the risk of their presence, unknown and undetected. If the City discovers actual or potential hazardous or toxic substances or materials, or petroleum contamination on the subject property, the City is requested to leave the property and notify the Commission's MoDOT representatives immediately.

(13) HUMAN REMAINS, SACRED OBJECTS AND ARTIFACTS: If human remains, or Native American or other sacred objects, artifacts or items of value are encountered during the use of the Trail Connector, their treatment will be handled in accordance with Sections 194.400 to 194.410, RSMo, as amended. There are no human remains, sacred objects, artifacts or other items of value known to be on the subject Trail Connector, to the best knowledge of Commission's MoDOT representatives. However, if the City finds any human remains, sacred objects, artifacts, or other items of value on the subject property, the City shall immediately cease the use of the Trail Connector and contact the Cultural Resources section of the Project Development Unit at MoDOT.

(14) ASSIGNMENT OF RIGHTS UPON DEFAULT, COMMISSION OPTION: If the City defaults and abandons the Trail Connector construction project, the Commission has the right, at its discretion, to complete construction of the Trail Connector or demolish the structure. The Commission shall have the right to charge all payments associated with and costs of construction or demolition to the City. Such assignment is at the option of the Commission, so that the Commission, if it elects, may compel performance and payments by Contractor (or a substitute contractor) in compliance with the construction contract as secured by the required surety bonds.

(15) TRAFFIC CONTROL PLAN, SIGNING AND SCHEDULING OF CONSTRUCTION: The City agrees to provide to the District Engineer a traffic control plan for handling traffic during the contemplated construction. The City agrees to provide construction signing in compliance with the Manual on Uniform Traffic Control Devices. This Agreement is conditioned upon written District Engineer approval of the traffic control plan and any revisions or modifications to the plan before construction may begin. All construction shall be scheduled to minimize disruption of the traffic flow. Any lane closure shall be scheduled during nonpeak hours except in the case of an emergency.

(16) MAINTENANCE AND REPAIR: At all times during the construction of the Trail Connector and after its completion, the site of the Trail Connector and all related structures and approaches will be maintained by and at the expense of the City so as to assure that these structures and the area within, above and beside Commission's right of way will be kept in good condition as to safety, use and appearance and such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the use of or access to the Commission's state highway system. The City's maintenance requirements herein shall be limited to the maintenance required for the use of the Trail Connector as provided for herein. Notwithstanding anything herein to the contrary, the City shall have no maintenance requirements with regard to the paved highway area on Commission right of way, except for cleaning trash or items

thrown from the Trail Connector.

(17) THE COMMISSION ACTION IF THERE IS FAILURE TO MAINTAIN PROPOSED STRUCTURE: In the event the City fails to meet its maintenance obligations set forth in this Agreement, the Commission or its contractors, agents and employees shall have the authority, but not a duty or obligation, to maintain the facility as the Commission deems necessary. If the City fails to begin making repairs within seventy-two (72) hours of receiving written notice or fails to continue with the repairs in a diligent manner, the maintenance work may be performed by the Commission, unless the District Engineer or his/her authorized representative determines that an actual or potential emergency exists requiring immediate repairs. Any expenses incurred by or on behalf of the Commission in performing the maintenance work described in this section shall be the debt of and shall be chargeable to the City.

(18) REQUIRED INSPECTIONS OF STRUCTURE:

(A) Upon completion of the construction of any structure under the Commission's right of way, the City, and any successors and assigns in interest of the City, shall be required to have scheduled inspections of said structure to insure the safety of the traveling public.

(B) The City shall be responsible for promptly submitting all required written inspection reports to the following: (1) To the Commission District Engineer having responsibility for the roadway above or under the Proposed Structure; (2) To the Commission's State Bridge Maintenance Engineer, located in the headquarters office of the Commission in Jefferson City Missouri.

(19) INDEMNIFICATION: The City shall be responsible for injury or damages as a result of the construction, use or maintenance of the Trail Connector. In addition to the liability imposed upon the City on the account of personal injury, bodily injury, including death or property damage suffered as a result of the construction, use and/or maintenance of the Trail Connector, the City assumes the obligation to save the Commission, including its agents, employees and assigns, harmless and to indemnify the Commission, including its agents, employees and assigns for all liability, loss, cost and expense, including legal fees, arising out of the construction, use and/or maintenance of the Trail Connector including any claims for increased flooding due to reduced waterway within the box culvert. The duty to indemnify, defend and hold harmless the Commission and others as set forth in this section is assumed by the City as a contractual obligation in return for the grant of this license. The City's duty to indemnify, defend and hold harmless the Commission and others as set forth in this section does not create nor give any rights to persons or entities not parties to this Agreement. It is the intent of the parties that the Commission is not to assume any liability whatsoever for the City's utilization of the Trail Connector for the aforementioned permitted activity.

In the event the Commission receives notice of any claim against it related to or arising out of the Trail Connector, Commission will promptly notify the City in writing, attaching a copy of such claim or summarizing its content and the name of the claimant, if not in writing. The City shall, through legal counsel of its choosing, proceed to defend the Commission, its members, employees, officers and agents from such claims and the Commission will fully cooperate with the City and its attorneys with such defense. This obligation to indemnify and defend shall not be deemed to include the intentional or negligent misconduct of the Commission, its members, officers, agents and employees or any of the other "named entities" referred to herein.

(20) LIABILITY INSURANCE: The City agrees to provide the Commission with liability insurance to protect the Commission respecting defense and payment of any claim arising out of the construction, use and/or maintenance of the Trail Connector, not caused by or as a result of any negligent, reckless, or intentional act of the Commission. Such insurance protection of the Commission shall be in the minimum limits of Three Hundred and Eighty-Five Thousand Dollars (\$385,000) per person and Two Million Five Hundred Thousand Dollars (\$2,500,000) per occurrence and hereafter as those limits may be increased under RSMo Section 537.600. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits of that insurance coverage which shall be as specified or adjusted periodically in a written notice from the Commission to the City.

Each policy shall name as the insured the Commission, the Missouri Department of Transportation, and their members, agents, officers and employees, who are collectively described in this section below as "the named entities". At the City's election, the insurance required by this section may be included in one or more policies obtained by or on behalf of the City naming another party or parties as insured also. However, if the City elects to insure more than the named entities in any one policy, that policy shall contain a severability of interests clause providing that the policy limits shall apply to each insured separately as their interests may conflict or be consistent, and regardless of whether the Commission shall be furnished with a certificate of policy showing such coverage to be in effect before any work shall commence on the Trail Connector and after completion of the Trail Connector Improvements as appropriate.

(21) ASSUMPTION OF RISK AND RELEASE:

(A) ASSUMPTION OF RISK: The City, by signing this license agreement, acknowledges that it has carefully read this legal document, and that it understands that the Commission property has vehicular traffic and other potential hazards on it that cannot reasonably be protected against, or warned of, in advance. By signing this license agreement, the City agrees to comply with the safety instructions it receives in this document and from MoDOT employees; the City acknowledges the existence of these and other risks on Commission property, and agrees to assume these risks by accepting this license, and using the Commission's right of way for the activity permitted herein.

(B) RELEASE: Voluntarily and knowingly, the City does for itself and for its heirs, predecessors, successors, officers, agents, and assigns, hereby fully forever remise, release, quitclaim, and discharge the Commission, its predecessors, successors, assigns, and all of its past, present and future officials, commissioners, employees, agents, counsel, and servants whether or not known as well as all persons, or organizations in privity with the Commission from any and all actions, causes of action, damages, claims, liability, responsibility, and demands whatsoever, in law or in equity, or otherwise, arising out of or in connection with the City's use of the Trail Connector for the duration of this license. This release includes all actions or omissions, whether negligent or not, of the Commission, its predecessors, successors, assigns, and all of its past, present and future officials, commissioners, employees, agents, counsel, and servants and this release also includes a release of said Commission regarding the known and unknown physical condition of the premises.

(22) LICENSE REVOCABLE – NO ASSIGNMENT: This license is revocable by the Commission or any appropriate MoDOT official if the City acts in an unsafe manner, or negligently, or refuses to follow safety instructions of MoDOT officials, or in any way breaches the terms of this license agreement. The City understands that it shall not assign or delegate any interest in this Agreement and shall not transfer any interest in or use of this license to another. This license is granted solely to the City and to no other person or entity.

(23) REVOCATION OF AGREEMENT: This license granted in this Agreement is at the pleasure or discretion of the Commission. The occurrence of any one of the following shall constitute a default by the City under the terms of this Agreement and, at Commission discretion, may result in revocation of this Agreement.

(A) Failure to Construct the Trail Connector as Approved: The Trail Connector is not completed in compliance with the plans and specifications approved or approved as modified by the Commission or the FHWA;

(B) Nonuse or Abandonment of Trail Connector: The Trail Connector ceases to be used for the purposes stated herein, or is abandoned;

(C) Damage or Disrepair: The Trail Connector is damaged or falls into disrepair, such that it becomes structurally unsound or unsafe to be used for the purpose for which it was built, and it cannot be repaired or the City will not repair the Trail Connector to a condition satisfactory to the Commission or the FHWA;

(D) Violation of Agreement: The City violates any term of this Agreement;

(E) Change in Use: The City changes or attempts to change the use or purpose of the Trail Connector, without prior written approval of the Commission, with the concurrence of the FHWA;

(F) Violation of Laws: The City constructs, operates, uses or maintains the Trail Connector or any other structure within the Commission's subject property in violation of any state or federal laws or regulations which are applicable at that time, but only after notice is given by the Commission specifying the violation and giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time;

(G) Failure to Pay Debts: The City fails to pay its debts or liabilities to the Commission under this Agreement;

(H) Failure to Maintain Insurance: The City fails to maintain insurance as required by this Agreement;

(I) Void or Invalid Agreement: This Agreement, or any material portion thereof is deemed void or invalid by a court of competent jurisdiction.

(J) Redesign, Relocation, or Alteration of Highway: In the event that the Commission should find that it is necessary to redesign, relocate, or alter the highway at this location, the Commission, at its sole discretion, may terminate this license. Further, should the Commission find that changes should be made at this location, but does not desire to terminate this agreement, the costs attributable to the City's usage shall be at the City's expense.

(24) RIGHT TO ENTER UPON THE TRAIL CONNECTOR:

(A) During Construction: The Commission and FHWA employees and agents shall have the right to enter upon, inspect and approve all work, materials and equipment on or at the site of the Trail Connector during its construction, at such time as Contractor's employees or the City's employees may be present, without prior notice to or approval of Contractor or the City.

(B) During Maintenance, Repair or Reconstruction: The Commission and FHWA employees and agents shall have the right to enter upon the Trail Connector and to inspect and approve all work, materials and equipment there, during any structural or external maintenance, repair or reconstruction of the Trail Connector, at such times as the City's employees or agents may be present, without prior notice to or approval of the City.

(C) Inspections: The Commission and FHWA employees and agents shall have the right to make periodic inspections of the Trail Connector when they deem such inspections necessary or advisable, upon not less than one week's advance written notice to the City, stating the time, location and purpose of the planned inspection.

(D) Emergency or Dangerous Condition: In the event of an emergency, or when the District Engineer or Commission's other authorized representative(s) have

determined that a condition may exist within, on or adjacent to the Trail Connector which represents an actual or potential danger to the traveling public, Commission, the FHWA, and their authorized agents and employees may immediately enter upon and within the Trail Connector to inspect. The Commission may request the City to repair; or where appropriate, may perform all repairs by itself or through its contractors, and charge to and collect the cost of repair from the City.

(25) EXTERIOR SURFACE MATERIAL: The exterior surface of the Trail Connector shall be a non-reflective material, which shall be submitted to the District Engineer for approval prior to commencement of construction.

(26) ADVERTISING RESTRICTIONS: No billboards or advertising is to be placed on or over the Commission's right of way or airspace, either within, on, attached to or apart from the Trail Connector.

(27) MAINTENANCE PERMIT: Any maintenance performed on the exterior of the Trail Connector shall require a permit to be issued by the District Engineer. Maintenance of the Trail Connector within the roadway limits may require proper lane closures as specified in the Manual on Uniform Traffic Control Devices or as directed by the District Engineer. Any lane closure shall be scheduled during nonpeak hours except in the case of an emergency.

(28) OPPORTUNITY TO CURE: As to any default described in paragraph (23) above, same shall not be a basis of terminating or revoking this Agreement until written notice is delivered to the City specifying the default with particularity, giving a reasonable opportunity to cure, not to exceed thirty (30) days, and which is not cured by the City within the applicable time.

(29) REMOVAL OF THE TRAIL CONNECTOR: In the event this Agreement is revoked and the Commission deems it necessary to request the removal of the Trail Connector Improvement, the removal shall be accomplished by a responsible party, as determined by the Commission, in a manner prescribed by the Commission, with all costs and expenses associated with the Trail Connector removal paid by the City. The Commission hereby consents to the removal of the Trail Connector by the City or its agents at any time, provided that such removal shall be accomplished by a responsible party, as determined by the Commission, in a manner prescribed by the Commission, with all costs and expenses associated with the removal paid by the City.

(30) UTILITY RELOCATION: With respect to any utility facilities requiring relocation or adjustment in connection with the herein contemplated construction, the City agrees that said relocation or adjustment shall be in accordance with the detailed plans as approved by the Commission with all costs and expenses associated with the utility relocation or adjustment paid by the City.

(31) NONDISCRIMINATION: The City, for itself, its representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby

covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, disability, sex or age shall be denied the benefits of or otherwise be subjected to discrimination in the construction or use of the City facilities served by the Trail Connector.

(32) PERSONS AUTHORIZED TO USE THE TRAIL CONNECTOR: The City, for itself, its representatives, successors in interest and assigns does hereby covenant and agreed as a covenant running with the property that access to the Trail Connector shall be limited to the Commission and its representatives, the City, its representatives, successors in interest, and assigns, and each of their employees, officers, agents, contractors, subcontractors, guests and invitees.

(33) AMENDMENTS: Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(34) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(35) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or district of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(36) SURVIVABILITY: The City's obligation to the Commission under this Agreement shall survive the completion of the terms of this Agreement.

(37) DEFENSE: This Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding arising out of, or relating to, or having anything to do with, any and all claims, counterclaims, issues, defenses or other matters released and discharged by this Agreement. This Agreement may also be used to abate any such action or other proceedings and as the basis of a counterclaim for damages.

(38) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the state of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(39) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(40) AUTHORITY TO GRANT LICENSE: The parties enter into this Agreement with full understanding that the Commission, to the best of its knowledge and belief, has the authority to grant this license. The Commission makes no representation that it has full fee simple title to the right of way which is the subject of

this Agreement. In the event this Agreement is rendered null and void based upon a determination that the Commission did not have the authority to grant this license on the subject right of way, the Commission will not be responsible for any damages, costs or other expenses incurred by the City in connection with this Agreement.

(41) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To _____ of _____, Missouri:
(Address)
(Phone)

- (B) To the Commission:
(Address)
(Phone)

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(42) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by _____ of _____ this ____ day of _____, 20__.

Executed by the Commission this ____ day of _____, 20__.

**MISSOURI HIGHWAYS AND
MISSOURI
TRANSPORTATION COMMISSION**

_____ OF _____,

By: _____

By: _____

Title _____

Title _____

Attest: (SEAL)

Attest: (SEAL)

Secretary to the Commission

By: _____
Title: _____

Approved as to Form:

Approved as to Form:

Commission Counsel

By: _____
Title: _____

