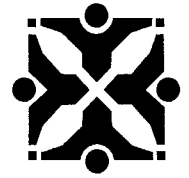


# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 126-15

**Department Source:** Public Works

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** 5/18/2015

**Re:** Pedestrian Trail License Agreement with MHTC for the Hominy Creek Trail Phase II Project

## Documents Included With This Agenda Item

Council Memo, Resolution/Ordinance, Exhibit to Resolution/Ordinance

**Supporting documentation includes:** Diagrams (construction, route, etc.)

## Executive Summary

Authorizing a Pedestrian Trail License agreement with Missouri Highway and Transportation Commission (MHTC) for Phase II of the Hominy Creek Trail project. The proposed trail begins near Woodridge Park and extends northward along Hominy Creek passing under Interstate 70, connecting with The Links development. The agreement with MHTC is required because a portion of the trail is within MHTC right-of-way. A diagram of the trail location is attached.

## Discussion

The Hominy Creek Trail is a GetAbout project that links the northeast side of the City to the southeast side of the City. Phase I of this project was constructed from Broadway to Woodridge Drive, and has been completed. The proposed Phase II project is approximately 6,145 feet in length and begins near Woodridge Park and extends northward along Hominy Creek passing under Interstate 70, connecting with The Links development. This project was just recently bid through Purchasing.

MoDOT and MHTC require the PTLA for any trail or sidewalk that is built within the limits of the MHTC right-of-way. Since the Hominy Creek Trail extends beneath Interstate 70 and I-70 Drive SE Outer Road, the PTLA is required.

## Fiscal Impact

Short-Term Impact: No cost related to this agreement.

Long-Term Impact: None

## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Parks, Recreation and Greenways, Transportation

Strategic Plan Impact: Health, Safety and Wellbeing, Infrastructure

Comprehensive Plan Impact: Infrastructure, Mobility, Connectivity, and Accessibility

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



## Suggested Council Action

Authorize a Pedestrian Trail License agreement with Missouri Highway and Transportation Commission (MHTC) for Phase II of the Hominy Creek Trail project.

## Legislative History

**01/18/11** (Ord 20854) acquire additional easements for construction of Hominy Creek Trail Phase II

**01/18/11** (Ord 20853) bid call through Purchasing to construct Hominy Creek Trail Phase II (from Woodridge Drive to Clark Lane)

**10/18/10** (Ord 20781) acquire easements for construction of the Hominy Creek Trail Phase II project

**9/07/10** (Ord 20732) declaring the need to acquire easements for construction of the Hominy Trail Phase I (from Broadway to Woodridge Drive) project

**8/02/10** (R145-10) setting a public hearing for the construction of the Hominy Trail Phase I (from Broadway to Woodridge Drive) and Phase II (Woodridge Drive to Clark Lane) project

**5/07/09** - Interested Parties Meeting

Department Approved

City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 126-15

**AN ORDINANCE**

authorizing a pedestrian trail license agreement with the Missouri Highways and Transportation Commission for the Hominy Creek Trail connection under I-70 and I-70 Drive SE; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a pedestrian trail license agreement with the Missouri Highways and Transportation Commission for the Hominy Creek Trail connection under I-70 and I-70 Drive SE. The form and content of the license agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

CCO FORM: RW28  
Approved: 06/09 (AR)  
Revised: 02/10 (ASB)  
Modified:

COUNTY: Boone  
ROUTE: I-70

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
PEDESTRIAN TRAIL LICENSE AGREEMENT**

THIS AGREEMENT is entered into by the **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION** (the "Commission"), acting for and on behalf of its subordinate **MISSOURI DEPARTMENT OF TRANSPORTATION** ("MoDOT"); and the City of Columbia, (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains Interstate 70 (I-70 and I-70 Drive SE Outer Road), including its associated structures and fixtures such as bridges, as part of the State Highway System in Boone County, Missouri; and

WHEREAS, the City owns and operates the pedestrian trail (hereinafter "trail") located throughout the area; and

WHEREAS, the City proposes to construct a pedestrian trail and adjacent connecting trail sections (hereinafter, "Pedestrian Trail") under and across the right of way limits of I-70 and I-70 Drive SE Outer Road between I-70 highway centerline stations 898+00 and 902+00, pursuant to the plans and specifications as referred to herein, in order to facilitate the travel of pedestrians along the trail and under I-70 and

WHEREAS, the Commission agrees to allow the City to pave a portion of the Commission's property for this purpose, and will license the City's Trail users to cross the Commission's property on that paved "Pedestrian Trail", 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) DEFINITIONS: In this Agreement, the listed terms are to be given the meanings provided in the subparagraphs below:

(A) Commission: This term means the Missouri Highways and Transportation Commission, a state constitutional entity. Where the term "Commission"

is used alone, it includes its subordinate agency, the Missouri Department of Transportation, also known as "MoDOT", and their officials, agents, representatives and employees.

(B) MoDOT: This acronym means the Missouri Department of Transportation, a state executive branch department. Where the context permits, the term also includes the officials, agents, representatives and employees of MoDOT.

(2) LICENSE GRANTED: The Commission hereby grants the City, its successors and assigns, a non-exclusive license to build and maintain the "Pedestrian Trail" under I-70 and across I-70 Drive SE Outer Road at the location described on Exhibit "A", and use such additional space adjacent to the "Pedestrian Trail" as may be reasonably necessary for working room during the period that the "Pedestrian Trail" is under construction and for maintenance of the "Pedestrian Trail" thereafter.

(3) CONSIDERATION FOR THIS LICENSE: CONSIDERATION: In consideration of the payment of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, the Commission grants this license to City for the use of the airspace within the area described in Exhibit A and as otherwise described in this Agreement. This license is revocable by the Commission through its Missouri Department of Transportation (MoDOT) officials, agents and 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 property is prohibited in times of floodwaters on the "Pedestrian Trail."
- (C) There will be no public park or recreational use or dedication of the Commission property for outdoor recreational use.

(4) WORK BY THE CITY: The City shall construct the "Pedestrian Trail" under and across the Commission's land from Interstate 70 highway station 898+00 to highway station 902+00 pursuant to the plans and specifications referred to herein, to provide a safe way for "Pedestrian Trail" users to travel under I-70. The Commission hereby grants the City, its successors and assigns, a non-exclusive license to use such additional space adjacent to the "Pedestrian Trail" as may be reasonably necessary for working room during the period that the "Pedestrian Trail" is under construction, and for maintenance of the "Pedestrian Trail" thereafter. 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 "Pedestrian Trail" by the City for the Trail Users to traverse along the trail and under I-70, until this license is revoked or terminated by the Commission. The City understands that it and its "Pedestrian Trail" users shall use this "Pedestrian Trail" at their own risk.

(5) COMMISSION OWNERSHIP: The Commission reserves the ownership

and ultimate use of the property over and under which the "Pedestrian Trail" will be located and its adjacent highway property for transportation purposes. This non-exclusive license prohibits the use or conversion of the licensed "Pedestrian Trail" property to a § 4(f) [23 U.S.C. § 138; 49 U.S.C. § 303] use, or potentially a § 6(f) [16 U.S.C. § 460/-8] use. It is expressly understood and agreed that the primary use and purpose of the Commission's property over and under which the "Pedestrian Trail" will be located, which is the subject matter of this license, shall be and remain as state highway property for transportation purposes only.

(6) CERTIFICATES/PERMITS: Since the proposed "Pedestrian Trail" location is within a regulated floodplain, the City's Engineer will obtain, complete and/or provide the necessary permits and the no-rise certificate, which will certify that the proposed concrete surface and related Pedestrian Trail construction work will cause "no rise" in the 100-year flood elevation. This work shall comply with all Federal Emergency Management Administration (FEMA) and state and federal Clean Water Act permit and certification requirements.

(7) "PEDESTRIAN TRAIL" DESIGN: The City and its consulting engineers, shall prepare final plans and final specifications for the "Pedestrian Trail" to be constructed on Commission property by the City. The "Pedestrian Trail" shall be designed to meet the requirements of AASHTO and the Americans with Disabilities Act (the "ADA"), and Commission design and construction standards. The City shall submit to Commission's Central District Engineer (the "District Engineer"), the final plans and specifications for the "Pedestrian Trail" and the adjacent connecting trail segments, for written approval of the District Engineer and the Federal Highway Administration (FHWA), before any construction can begin on the Commission property. The general design and location of the "Pedestrian Trail" is shown on Exhibit "A", which is attached to this Agreement and incorporated herein by reference.

(8) "PEDESTRIAN TRAIL" PLANS APPROVAL: The Commission and FHWA, through MoDOT, shall either approve or disapprove the final plans and specifications for the "Pedestrian Trail" within thirty (30) days of their receipt from the City. If the plans and specifications are not approved, MoDOT shall explain in writing what deficiencies exist that must be corrected before the Commission and/or FHWA will approve those plans.

(9) "PEDESTRIAN TRAIL" CONSTRUCTION: After written approval is obtained from the Commission and upon proper application by City, the Commission shall issue, through its District Engineer or his authorized representatives, any permits necessary for City to perform the work contemplated herein. The "Pedestrian Trail" shall be constructed in accordance with the approved plans and specifications to the satisfaction of the District Engineer or his authorized representatives.

(10) PLAN SHEET: The plan sheet showing the property lines and "Pedestrian Trail" area subject to this license is attached to this Agreement as Exhibit "A" and incorporated herein by reference.

(11) CONSTRUCTION CONTRACTOR: The Commission acknowledges that City will enter into a construction contract with an approved contractor (the "Contractor") to construct the "Pedestrian Trail" and adjacent connecting trail segments in accordance with the approved construction plans and specifications. The City shall include the following provisions in the appropriate construction contract with the Contractor:

(A) Commission Inspection: The Commission's agents and employees along with FHWA will be authorized to inspect the work on the "Pedestrian Trail" on Commission property, 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 and FHWA agree that all such inspections shall be conducted in a timely and reasonable manner.

(B) Commission Inspection Before Final Acceptance: The Commission and FHWA shall make a post-construction inspection of the "Pedestrian Trail", and if deemed necessary, require additional "Pedestrian Trail" finishing work for safety or durability, before the City may give its final acceptance of the "Pedestrian Trail" construction work to the Contractor.

(C) Responsible Party for Payment: The Contractor will look solely to City for payments pursuant to the City's 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. The City's Contractor shall have no claim rights against the Commission, MoDOT, or their officials, employees, agents, representatives, successors or assigns.

(D) Construction Bonds: In the event that City shall use an outside contractor, City shall acquire from the Contractor and shall deliver, prior to commencement of work on the "Pedestrian Trail", 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 City and the Commission, which shall be named as obliges 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 City other than the "Pedestrian Trail". The performance and payment bond requirement does not render the "Pedestrian Trail" construction project a public works project.

(12) RESTORATION OF COMMISSION PROPERTY: At all times during and after the construction of the "Pedestrian Trail", the City and its Contractor shall maintain the "Pedestrian Trail" in a manner that will not injure or damage the paved highway facilities or any of the Commission property, except as specifically authorized herein. After construction of the "Pedestrian Trail", the City shall restore the state property to its original condition or better, as determined by the District Engineer. Disturbed areas will be fine graded, seeded, mulched or sodded by City.

(13) "PEDESTRIAN TRAIL" COST: City shall construct and maintain the "Pedestrian Trail" at its own cost and expense in accordance with the Final plans and final specifications approved by the Commission and FHWA. If and when the highway is expanded, the City is fully responsible for the cost of any required modifications of the "Pedestrian Trail".

(14) DURATION OF LICENSE: The Commission and the City agree that this license to design, construct, maintain, and use the "Pedestrian Trail" on Commission property shall exist indefinitely, subject to the Commission's right to revoke this license at any time; which right of revocation shall be exercised reasonably. This license shall also terminate by operation of law if the City commits a material breach of this Agreement which is not promptly remedied and corrected by the City, and that breach is not excused or forgiven in writing by the Commission or its representatives.

(15) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission or MoDOT or FHWA and the City as partners or joint venturers, or as jointly liable, in the City's design, construction, maintenance and operation of the "Pedestrian Trail" on Commission property for public use.

(16) 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.

(17) 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 design, construction, maintenance or use of the "Pedestrian Trail", they will be handled in accordance with the Native American Graves Protection and Repatriation Act plus Sections 194.400 to 194.410, RSMo, as amended. There are no known human remains, sacred objects, artifacts or other items of value in the vicinity of the proposed "Pedestrian Trail", to the best knowledge of MoDOT staff. However, if the City finds any human remains, sacred objects, artifacts, or other items of value on the subject property, the City and or its contractor shall immediately cease work on or the use of the "Pedestrian Trail", and contact the Design-Historic Preservation Unit at MoDOT.



(18) ASSIGNMENT OF RIGHTS UPON DEFAULT, COMMISSION OPTION: If the City defaults on or abandons construction of the "Pedestrian Trail", the City's rights in this Agreement may be assigned to the Commission at its option, and the Commission shall have the right, at its discretion, to complete construction of the "Pedestrian Trail" or demolish the structure. The Commission shall have the right to charge all Commission or MoDOT costs of the "Pedestrian Trail" construction or demolition to the City.

(19) 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 "Pedestrian Trail" 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 avoid or minimize disruption of traffic flow on Route I-70 and other state highways. No state highway lane closures shall be authorized.

(20) MAINTENANCE AND REPAIR: At all times during the construction and after the completion of the "Pedestrian Trail", the City shall maintain and repair at its own expense the "Pedestrian Trail" and all related structures, approaches and adjacent connecting trail sections, so that these structures and the Commission's underlying and adjacent highway property will be kept safe and in good condition. The City's maintenance of the "Pedestrian Trail" and its vicinity shall be accomplished so as to cause no unreasonable interference with the use of or access to the Commission's state highway system. However, the City is not obliged to maintain any paved highway or shoulder area on Commission property, except for cleaning trash or items thrown from the "Pedestrian Trail".

(21) COMMISSION ACTION IF THE CITY FAILS TO MAINTAIN "Pedestrian Trail": If, after written or facsimile notice, the City fails to meet its maintenance obligations to keep the "Pedestrian Trail" and adjacent Commission property clean, in good appearance and safe for use by City and its authorized users, the Commission (through MoDOT) shall have the authority, but not a duty or obligation, to maintain or repair the "Pedestrian Trail" on Commission property and charge all such costs of maintenance and repair to the City. If City fails to begin making repairs within seventy-two (72) hours after receiving written notice, or fails to continue with the repairs in a diligent manner to completion, the maintenance and repair work may be performed by MoDOT. However, if the District Engineer or his/her authorized representative determines that an actual or potential emergency exists that requires immediate repairs, then MoDOT may make immediate repairs without prior written notice, and charge those expenses to the City. Any "Pedestrian Trail" maintenance and repair expenses incurred by or on behalf of the Commission or MoDOT under this paragraph shall be the debt of, and shall be chargeable to and fully compensated by, the City. The City's failure to maintain or repair the "Pedestrian Trail" promptly, after the Commission or

MoDOT give written notice of a worn, damaged or dangerous location on the "Pedestrian Trail", shall constitute a material breach of this Agreement by the City. Likewise, the City's failure to promptly pay the Commission or MoDOT for their costs to maintain or repair the "Pedestrian Trail" when the City, after written notice, failed to make its own repairs promptly and completely, shall constitute a material breach of this Agreement by the City.

(22) REQUIRED INSPECTIONS OF STRUCTURE:

(A) After completion of the construction of the "Pedestrian Trail" on the Commission's property, the City and its successors and assigns shall be required to have scheduled inspections of that structure by a registered engineer at least annually, to ensure the safety of the "Pedestrian Trail" for the traveling public.

(B) The City shall be responsible for promptly submitting copies of all written annual or other "Pedestrian Trail" inspection reports to the following: (1) To the Commission's District Engineer having responsibility for State Route I-70; and (2) To the Commission's State Bridge Engineer, located in the Commission Headquarters Building in Jefferson City, Missouri.

(23) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be

construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(24) NOTICE OF CLAIM OF POTENTIAL COMMISSION LIABILITY: In the event the Commission receives notice of any claim against it related to or arising out of the negligent or insufficient design, construction, maintenance, use or inspection of the "Pedestrian Trail", the 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 its own legal counsel, proceed to defend the Commission, MoDOT, and their members, employees, officers and agents, from any such claim, and the Commission will fully cooperate with the City and its attorneys in their defense of these state entities, officials and employees. This City obligation to indemnify and defend shall not apply to or be deemed to include the intentional or negligent acts or omissions of the Commission or MoDOT, or their members, officers, agents and employees.

(25) LIABILITY INSURANCE: The City agrees to provide the Commission with liability insurance to protect and defend the Commission from liability for any claim arising out of the negligent or deficient design, construction, maintenance, use or inspection of the "Pedestrian Trail", which was not caused by or as a result of any negligent, reckless, or intentional act of the Commission or MoDOT. Such insurance protection of the Commission shall be in the minimum limits of Five Hundred Thousand Dollars (\$500,000) per person and Three Million Dollars (\$3,000,000) per occurrence (or higher, as those limits may be increased under Section 537.600 RSMo). 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 for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the Commission to City.

(A) Additional Named Insured: Each such insurance policy shall specify as the "insured" or "additional named insured" the Commission, the Missouri Department of Transportation, and their members, agents, officers and employees, who are collectively described in this provision as "the insured state entities". At the City's election, the insurance required by this provision 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 City elects to insure more than the insured state entities in any one policy, that policy shall contain a severability of interests clause, providing that the policy limits shall apply independently to the insured state entities separately from any other insured party, even if their interests may conflict or be inconsistent.

(B) Duration of Insurance: The insurance coverage and protection required by this Agreement shall be and remain in force continuously, through original and any necessary successor policies of insurance, from prior to the time the City begins construction of the "Pedestrian Trail" on Commission property, for as long as that "Pedestrian Trail" remains open for public use of it and the adjacent connecting trail

segments. Upon request, the City shall provide the Commission and/or MoDOT with a copy of a certificate of insurance, showing that such insurance is in effect. And if any claim or suit is brought against the Commission or MoDOT, or their officials, employees, agents or representatives, the Commission and/or MoDOT may require the City to provide a full and complete copy of all applicable policies of insurance, appropriately endorsed.

(26) 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 by opening the Commission's highway property for the uses and activities authorized in this Agreement.

(27) LICENSE REVOCABLE – NO ASSIGNMENT: This license is revocable by the Commission or any appropriate MoDOT official if the City designs, constructs, maintains, uses or inspects the "Pedestrian Trail" in a negligent, reckless, wrongful or unsafe manner, or refuses to follow contract or 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 any authorized Trail User and MoDOT authorized staff, and to no other person or entity.

(28) REVOCATION OF AGREEMENT: This license to construct, maintain, and use the "Pedestrian Trail" for Traversing under I-70 is granted in this Agreement at the pleasure or discretion of the Commission. The occurrence of any one or more of the following shall constitute a material breach of this Agreement, rendering the City in default and, at the discretion of the Commission or its representatives, may result in the revocation of this license:

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

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

(C) Damage or Disrepair: The "Pedestrian Trail" 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 the City will not repair the "Pedestrian Trail" to a condition satisfactory to the Commission;

(D) Violation of This Agreement: The City violates any material

term or condition of this Agreement;

(E) Change in Use: The City changes or attempts to change the use, purpose or location of the "Pedestrian Trail", without prior written approval of the Commission;

(F) Violation of Laws: The City constructs, operates, uses or maintains the "Pedestrian Trail" or any other structure on or within the Commission's property in violation of any state or federal laws or regulations applicable at that time, or in violation of this Agreement; 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, which violation is not cured by the City within the applicable time;

(G) Failure to Pay Debts: The City, its insurer, or any other agent or representative of 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 to the highway or the "Pedestrian Trail" should be made at this location, but the Commission does not desire to terminate this agreement, the City shall bear the costs to relocate or modify the "Pedestrian Trail" to accommodate the Commission's redesign.

(29) RIGHT TO ENTER UPON THE "Pedestrian Trail":

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

(B) During Maintenance, Repair or Reconstruction: The Commission, MoDOT, and their officials, employees, agents and representatives along with FHWA shall have the right to enter upon the "Pedestrian Trail" and to inspect and approve all work, materials and equipment there, during any maintenance, repair or reconstruction of the "Pedestrian Trail", at such times as City employees or agents may be present, without prior notice to or approval of City.

(C) Inspections: The Commission, MoDOT, and their officials, employees, agents and representatives along with FHWA shall have the right to make periodic inspections of the "Pedestrian Trail" when they deem such inspections necessary or advisable, at any time that the "Pedestrian Trail" is open for public use.

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

(30) ADVERTISING RESTRICTIONS: No billboards or advertising is to be placed on or over the Commission's property or airspace, either within, on, attached to or apart from the "Pedestrian Trail".

(31) OPPORTUNITY TO CURE: No material breach or default described in Paragraphs (21) or (28) shall be a basis for terminating or revoking this license or this Agreement until written notice is delivered to City specifying the material breach or default with particularity and giving the City a reasonable opportunity to cure, not to exceed thirty (30) days. The license may only be revoked for cause when that material breach or default is not cured by the City in the time given in which to cure that problem.

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

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

(34) NONDISCRIMINATION: The City, for itself, its representatives 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 "Pedestrian Trail".

(35) 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 City and the Commission.

(36) 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.

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

(38) SURVIVABILITY: The City's obligations to the Commission under this Agreement shall survive the revocation of its Commission license to construct and maintain the "Pedestrian Trail".

(39) 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.

(40) 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.

(41) 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 (or revoke) this license. The Commission makes no representation that it has full fee simple title to the highway property 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 property, the Commission will not be responsible for any damages, costs or other expenses incurred by City in the implementation of this Agreement, or in the City's design, construction, maintenance, repair, use or inspection of the "Pedestrian Trail".

(42) 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 the City of Columbia:  
Public Works Department  
701 E. Broadway  
Columbia, MO 65201

(B) To the Commission:  
Missouri Department of Transportation Central District  
P.O. Box 718,  
1511 Missouri Boulevard, Jefferson City, Missouri, 65102

Facsimile No: 573-526-5490

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.

*[Remainder of Page Intentionally Left Blank]*



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

Executed by the City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the Commission this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF COLUMBIA, MISSOURI

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Mike Matthes

Title City Manager

ATTEST: (SEAL)

ATTEST: (SEAL)

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_

Sheela Amin

Title City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

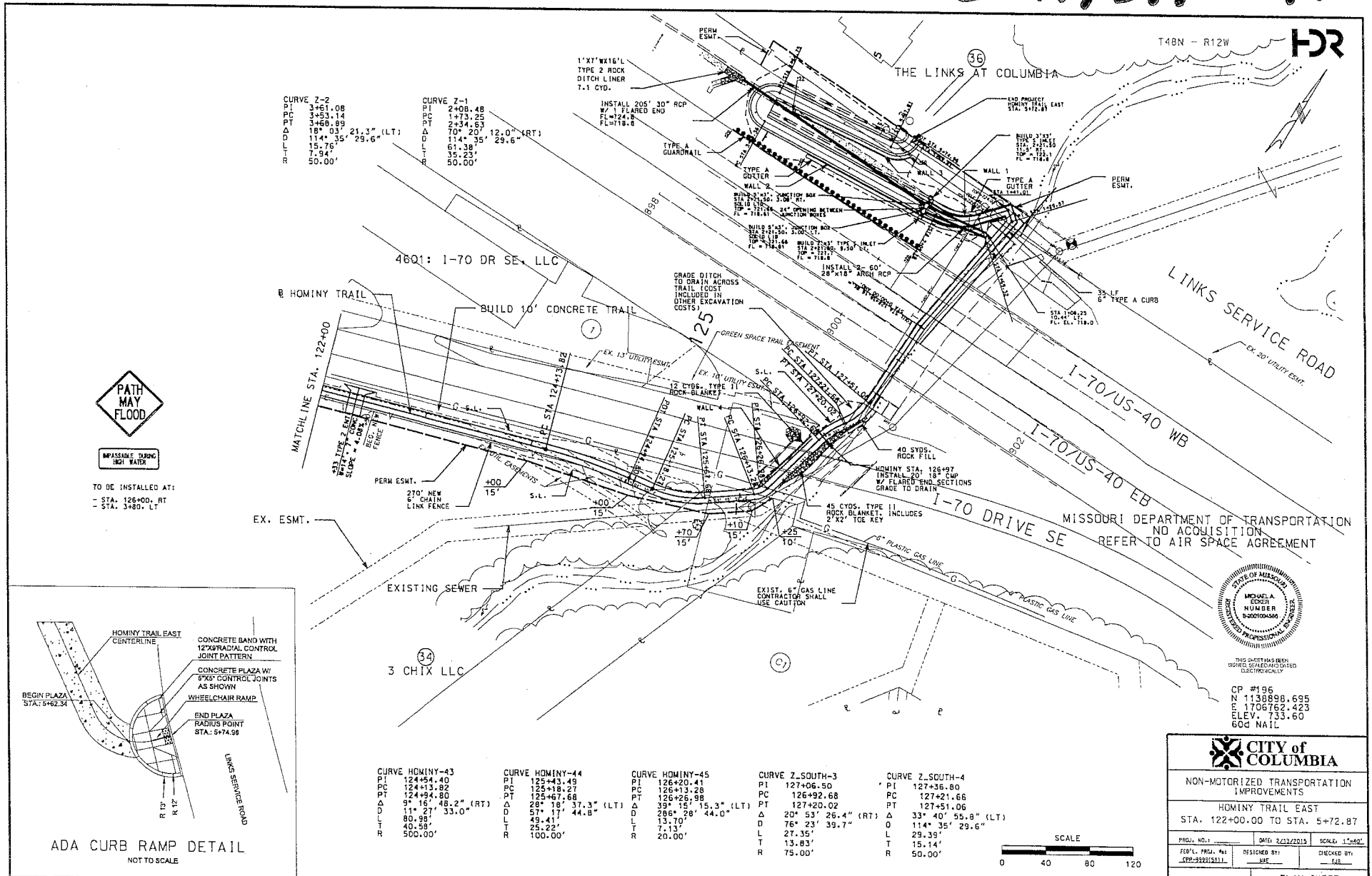
By \_\_\_\_\_

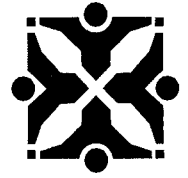
Nancy Thompson

Title City Counselor

Ordinance Number \_\_\_\_\_

# EXHIBIT "A"





## SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Diagrams (construction, route, etc.)

