



Board of Aldermen Request for Action

MEETING DATE: 3/18/2025

DEPARTMENT: Public Works

AGENDA ITEM: Resolution 1454, License Agreement with the Missouri Highways and Transportation Commission for the OK Trail

REQUESTED BOARD ACTION:

A motion to approve Resolution 1454, authorizing the Mayor to sign a license agreement with the Missouri Highways and Transportation Commission for the OK Trail.

SUMMARY:

The City received a grant in the amount of \$184,600 from the Missouri Department of Natural Resources – Recreational Trails Program to construct the OK Trail. The estimated total cost is \$288,000.

The trail will be a ten-foot wide trail with a parallel four foot running trail constructed of lime screenings. A butterfly garden will also be constructed in conjunction with the project.

The trail will connect the Diamond Crest subdivision to the splash pad and extend south the Lake Meadows subdivision.

A portion of the trail will be within the Highway W right of way that is owned by MoDOT. The State requires a no cost license agreement for usage of the right-of-way. The license allows the City to construct and maintain the trail in the right of way. The license outlines that the City is responsible for maintenance and also holds the State harmless for any accident that may occur as a result of the trail being in the right-of-way or it's usage. The license also includes that if the State needs the right of way where the trail exists the City would be responsible for moving the improvements.

PREVIOUS ACTION:

[Click or tap here to enter text.](#)

POLICY ISSUE:

Neighborhood connectivity / Trail improvement

FINANCIAL CONSIDERATIONS:

The City received a grant for \$184,600 from the Missouri Department of Natural Resources – Recreational Trails Program. The estimated cost is \$288,000. This project is budgeted in the 2025 Parks and Stormwater Sales Tax fund.

ATTACHMENTS:

☐ Ordinance

☒ Resolution

☐ Staff Report

☒ Other: Map

Agreement

☐ Contract

☐ Plans

☐ Minutes

RESOLUTION 1452

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A LICENSE AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR THE OK TRAIL

WHEREAS, the City is constructing the OK Trail from Diamond Lane west along Highway W to the City Splash Pad then south to Lake Meadows Drive; and

WHEREAS, the Missouri Highways and Transportation Commission (MODOT) owns and maintains State Route W (Highway W) as part of the State Highway System in Clay County, Missouri; and

WHEREAS, the City desires to use a portion of the Commissions property along Highway W for construction and access to the OK Trail; and

WHEREAS, the City desires to enter into a no cost license agreement with the Commission for maintenance and access of the OK Trail.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:

THAT the Mayor is hereby authorized to sign the License Agreement with the Missouri Highways and Transportation Commission.

PASSED AND ADOPTED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, this 18th day of March, 2025.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

CCO Form: RW37
Approved: 01/09 (ASB)
Revised: 07/24 (JDS)
Modified:

COUNTY: Clay
ROUTE: W

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 Smithville (hereinafter, "City").

WITNESSETH:

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

WHEREAS, the City owns and operates the Pedestrian trail(s) (hereinafter, "Trail") located throughout the area, including those portions of the Trail laying outside of the Commission's property limits of Highway lying between centerline station 0+00E and centerline station 1+78;

WHEREAS, the City desires to use that portion of the Commission property limits of Highway lying between centerline station 0+00E and centerline station 1+78, (hereinafter, "Trail Connector") for the users of the Trail to cross Commission property when traveling on those portions of the Trail laying outside the said Commission property 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 and its successors, a non-exclusive right to use that portion of the Commission property across Highway 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 property limits.

(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 property is prohibited in times of floodwaters on the Trail Connector.

(C) There will be no public park or recreational use or dedication of the Commission property for outdoor recreational use.

(3) WORK BY THE CITY: The City shall construct a paved surface on the Trail Connector in the Commission property limits of Highway lying between centerline station 0+00E and centerline station 1+78, pursuant to the plans and specifications as referred to herein. This non-exclusive license prohibits conversion of the property to a 4f or 6f 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 use of the Commission.

(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 paved surface will cause "no rise" in the 100-year flood elevation.

(5) TRAIL CONNECTOR DESIGN: The City, consulting engineers and architects, 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 Kansas City District Engineer (hereinafter, "District Engineer") the final plans and specifications for the Trail Connector for written approval by the District Engineer subject to the concurrence of the Federal Highway Administration (hereinafter, "FHWA") before any construction can begin over the Commission property. 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 a reasonable time after 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 lines 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 PROPERTY: 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 property 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 Commission is fully responsible for cost of the restoration to the Trail Connector. Once restoration has been completed the City shall resume its maintenance responsibility for 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 December 31st, 2049. Upon approval of both parties, the terms and conditions of this Agreement are renewable for an additional twenty-five (25) years from the date of the expiration of the Agreement. Any extension shall be memorialized in an appropriate Supplemental Agreement and executed by the duly authorized representatives of the parties.

(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 Commission's MoDOT representatives.

(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 coordinated with MoDOT and 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 with respect to City use and operation of the Trail Connector so as to assure that these structures and the area within, above and beside Commission's property will be kept in accordance with ADA and Commission standards and 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 property, except for cleaning trash or items thrown from the Trail Connector and maintaining any adjoining highway structure in a graffiti-free condition in accordance with direction as provided by MoDOT.

(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 thirty days 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) MAINTENANCE PERMIT: Any maintenance performed on the infrastructure of the Trail Connector shall require a permit to be issued by the District Engineer, or the District Engineer's authorized representative. 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 coordinated with MoDOT and scheduled during nonpeak hours except in the case of an emergency.

(19) 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 maintain insurance as required for the City in Paragraph 20 of this License, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts as required for the City in Paragraph 21 of this License.

(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.

(20) INSURANCE:

The City shall purchase and maintain at the City's own expense commercial general liability, automobile liability, and umbrella/excess liability insurance with an insurance company(ies) eligible to do business in the state of Missouri in the following types and minimum limits:

High Risk, as defined by Commission, for Licenses with, but not limited to, the following characteristics: Cattle pass agreement, storing commercial/agricultural equipment, material storage, trash clean up under bridge, tunnel under a route,

conveyor belt to move aggregate through box culvert, repair transit vehicles, beneath structure Licenses, construction of tunnels over roadway, emergency helicopter landing area, underground gas storage, pedestrian path, airspace for Metrolink bridge over roadway, park and ride lot, gas station drive lanes, future tunnels for mining/quarrying.

Commercial General Liability (CGL) Insurance:

Policy Form: An Insurance Services Office (ISO)-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

Limits:

Each Occurrence Limit (Bodily Injury and Property Damage) Low risk:

\$600,000, Moderate: \$800,000, High: \$1,000,000.

Personal and Advertising Injury Limit Low risk: \$600,000, Moderate:

\$800,000, High: \$1,000,000

Products and Completed Operations Aggregate Limit Low risk: \$1,000,000,

Moderate: \$1,500,000, High: \$2,000,000

General Aggregate Limit Low risk: \$1,000,000, Moderate: \$1,500,000, High: \$2,000,000

Deductible: \$10,000 maximum per occurrence.

Additional Insured: To be provided for premise and completed operations under ISO Endorsements CG 20 10 and CG 20 37, or their equivalent, for *Missouri Highways and Transportation Commission, its members and department employees* Coverage is to apply on a primary noncontributory basis when coverage is available to the Commission, using ISO Endorsement CG 20 01, or its equivalent. Copies of the additional insured coverage must be attached to the certificate.

Waiver of Subrogation: To be provided under ISO Endorsement CG 24 04, or its equivalent in favor of *Missouri Highways and Transportation Commission, its members and department employees* to waive the rights of the City's insurers' rights of recovery.

Umbrella/Excess Liability Insurance

Policy Form: Coverage must follow-form and include the required CGL and Business Automobile Liability as underlying insurance, including additional insured coverage. If umbrella/excess liability insurance coverage is not follow-form, differences must be identified to Commission.

Additional Insured: To be provided for premise and completed operations for *Missouri Highways and Transportation Commission, its members and department employees* Coverage is to apply on a primary noncontributory basis when coverage is available to

the Commission. Copies of the additional insured coverage must be attached to the certificate.

Waiver of Subrogation: To be provided in favor of *Missouri Highways and Transportation Commission, its members and department employees* to waive the rights of the City's insurers' rights of recovery.

The City shall cause insurer to include the Missouri Highways and Transportation Commission as an additional insured. This insurance shall be for the payment of any property damages, personal injury or death to person(s) on the premises as licensees or invitees, expressed or implied, of the City. Evidence of the City's liability insurance by certificates of insurance shall be furnished to the Commission, upon renewal or replacement of each required policy of insurance, and upon Commission's written request, and if the City fails, refuses or neglects to take out, extend or maintain said insurance this License shall be null and void. The certificates will also include copies of endorsements evidencing the Commission as an additional insured on the City's commercial general liability insurance policy, business automobile liability insurance policy, and umbrella/excess liability policy or policies. Delivery or acceptance of a certificate of insurance not meeting the requirements of this License shall not be deemed to waive any of City's requirements hereunder.

(21) ASSUMPTION OF RISK AND RELICENSE:

(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 property for the activity permitted herein.

(22) 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 and 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 and 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 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) Unsafe Action: If the City acts in an unsafe manner, 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.

(K) Removal of the Trail Connector: In the event this Agreement is revoked under provisions of Section (22) of this Agreement and the Commission deems it necessary to request to remove the Trail Connector Improvement, the removal shall be accomplished by the City or 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.

(23) 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 suspend this license as needed to redesign, relocate, or alter the highway at this location. Further, should the Commission find, that changes should be made at this location, but does not desire to terminate this Agreement, the Commission shall make changes at its expense. Once the changes have been completed, the City shall resume its maintenance responsibility for the Trail Connector.

(24) 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 Trail Connector. On premise directional signs pertaining only to the Trail and Trail Connector will be allowed and installed only after approval by the Commission or its representative. All such proposed on premise directional signs including, but not limited to, "City Name" or "Welcome To" signs and all aesthetic sign treatments and components (i.e., sign sheeting, mounting height, characteristics of pole and breakaway assembly, etc.) shall be submitted in detailed plans to the Commission or its representative and approved prior to installation.

(25) OPPORTUNITY TO CURE: As to any default described in paragraph (22) 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.

(26) 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.

(27) 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.

(28) NONDISCRIMINATION: The City, for itself, its representatives, and successors in interest, 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.

(29) 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.

(30) 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.

(31) 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.

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

(33) 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.

(34) 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.

(35) 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.

(36) 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 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 the City in connection with this Agreement.

(37) 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 Smithville, Missouri:
2 Helvey Park Dr
Smithville, MO 64089
(816) 532- 2080
- (B) To the Commission:
District Engineer
600 NE Colbern Road
Lee's Summit, MO 64086
(816) 622-6500

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.

(38) 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 the City on _____(DATE).

Executed by the Commission on _____(DATE).

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

THE CITY OF _Smithville_, MISSOURI

By: _____

By: _____

Title _____

Title Damien Boley, Mayor

Attest: (SEAL)

Attest: (SEAL)

Secretary to the Commission

By: _____

Title: Linda Drummond, City Clerk

Approved as to Form:

Approved as to Form:

Commission Counsel

By: _____

Title: _____

Resolution No. 1452

ACKNOWLEDGMENT BY CITY

STATE OF _____)
)
COUNTY OF _____) SS

On this ____ day of _____, 20____, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the City of _____ and that the foregoing instrument was signed and sealed on behalf of the City of _____ and that he/she acknowledged said instrument to be the free act and deed of the City of _____ and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public
[Place SEAL under signature]

My Commission Expires: _____

ACKNOWLEDGMENT BY COMMISSION

STATE OF MISSOURI _____)
)
COUNTY OF _____) SS

On this _____ day of _____, 20____, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said _____ acknowledged said instrument to be the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public
[Place SEAL under signature]

My Commission Expires: _____

Smithville, MO



Legend

- Road
- Parcel Public



Notes

400.0 0 200.00 400.0 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.

THIS MAP IS NOT TO BE USED FOR NAVIGATION