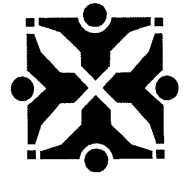


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: R 101-15

Department Source: Public Works

To: City Council

From: City Manager & Staff

Council Meeting Date: 6/15/2015

Re: Hold Harmless Agreement for Mid-Missouri Surgery Center Storm Sewer near Forum Boulevard and Forum Katy Pkwy

Documents Included With This Agenda Item

Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Authorization of the Hold Harmless Agreement will protect the City from future liability in connection with repair and maintenance of the public storm sewer installed by a private contractor in connection with construction of the Mid-Missouri Surgery Center.

Discussion

The contractor for the Mid-Missouri Surgery Center installed a storm sewer which is approximately 40 feet deep and due to building proximity there is the possibility of inadequate lateral support of the building foundation in the event future repairs are necessary. The storm sewer is to become part of the city's stormwater system; however, due to the concern with the alignment, depth and construction standards of the sewer as constructed by the contractor additional protections for the city are required prior to acceptance of the storm sewer as a part of the city's system.

The agreement would require the storm sewer contractor to install a lining in the main with a durable material to decrease the likelihood of additional shifting or damage to the pipe. The agreement also requires the property owner to hold the city harmless for any damage caused to the building due to repair or construction of the storm sewer in the future. The agreement will be filed in the land records and be binding on all subsequent owners of the property.

Fiscal Impact

Short-Term Impact: none

Long-Term Impact: none

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Suggested Council Action

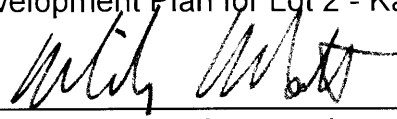
Authorize the agreement.

Legislative History

Bill 301-13 - October 21, 2013 - Approval of C-P Development Plan for Lot 2 - Katy Place Heights

A handwritten signature in black ink, appearing to read "John D. Glass", written over a horizontal line.

Department Approved

A handwritten signature in black ink, appearing to read "Mick M...", written over a horizontal line.

City Manager Approved

Introduced by _____ Council Bill No. R 101-15

A RESOLUTION

authorizing a hold harmless agreement with Mid-Missouri Surgery Center, LLC and Mid-Missouri Real Estate Holdings, LLC in connection with repair and maintenance of a public storm sewer near Forum Boulevard and Forum Katy Parkway.

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

SECTION 1. The City Manager is hereby authorized to execute a hold harmless agreement with Mid-Missouri Surgery Center, LLC and Mid-Missouri Real Estate Holdings, LLC in connection with repair and maintenance of a public storm sewer near Forum Boulevard and Forum Katy Parkway. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof.

ADOPTED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

HOLD HARMLESS AGREEMENT

This Hold Harmless Agreement (the “**Agreement**”) is executed and entered into as of the Effective Date by and between the City of Columbia, Missouri (“**City**”), whose mailing address is PO Box 6015, Columbia, MO 65205, and Mid-Missouri Surgery Center, LLC and Mid-Missouri Real Estate Holdings, LLC (collectively, “**Mid-Missouri**”), whose mailing address is _____.

WHEREAS, Mid-Missouri is the owner, in fee simple, of real property that has been improved, located at _____, Columbia, Missouri, and fully described in Exhibit A attached hereto and incorporated herein by reference (the “**Property**”); and

WHEREAS, in connection with the development of the Property, a storm sewer line has been constructed on the Property by Mid-Missouri to provide service to the property as shown on the drawings attached hereto as Exhibit B and incorporated herein by reference which Mid-Missouri and City intend to become part of the City’s municipal stormwater utility system (the “**Sewer**”); and

WHEREAS, the City has expressed concerns with the existing condition, location and construction of the Sewer line, as well as future maintenance and construction concerns, and desires additional assurances from Mid-Missouri prior to acceptance of the Sewer by the City as a part of the City’s stormwater utility system; and

WHEREAS, the parties desire to memorialize the terms and conditions under which the City will accept dedication of the Sewer and incorporate it into the City’s stormwater utility system for public use and maintenance;

NOW THEREFORE, for ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties do hereby agree as follows:

1. Acknowledgment of Acceptance of Sewer. For and in consideration of the obligations and covenants of Mid-Missouri and future owners of the property (the “**Property Owners**”) set forth in this Agreement, the City hereby agrees the Sewer shall be accepted by the City as part of the City’s municipal stormwater utility system, subject to the terms and conditions contained herein. Upon execution of this Agreement and filing of such Agreement in the land records of Boone County, Missouri, the City agrees that it will not stop, enjoin or otherwise delay or withhold any further construction or permits or approvals related to the Property based upon or in any way arising out of the Sewer. A temporary occupancy permit may be granted by the City in the event the Property Owners has met all the other requirements for issuance of such temporary occupancy permit, which permit the City will not unreasonably withhold. The parties expressly agree the Property Owners shall not be entitled to a final certificate of occupancy until such time as all the terms and conditions set forth herein are complete and construction of the Sewer Work by Budrovich Excavating as set forth in Paragraph 3 has occurred and been accepted by the City.

2. Hold Harmless. In exchange for acceptance of the Sewer, Mid-Missouri, for itself and its successors and assigns and future owners of the Property, agrees to indemnify and hold harmless the City and its employees, officials, successors, assigns and contractors from any and all damages, claims, liability, costs or expenses, arising from any damage to the Property or the building or any fixtures or improvements located on the Property related to the Sewer or the Sewer construction, existing now or occurring in the future as a result of the condition of the Sewer or maintenance or construction activities which may occur on the Sewer, expressly including but not limited to collapse of the Sewer or future maintenance and construction activities of the City, its employees or contractors on the Sewer which may impact or cause damage to any building, fixtures or improvements constructed on the Property.

3. Lining of Sewer. As a condition precedent to this Agreement, Mid-Missouri will cause Budrovich Excavating to establish a performance bond or issue a letter of credit to insure the cost and performance of lining the Sewer, and enter into an agreement to install the lining of the Sewer by separate agreement with the City at no cost to the City (the “**Work**”). The parties expressly agree the Work of Budrovich Excavating will be subject to the standard terms and conditions of the City’s public works contracts and will at a minimum require bonding, insurance, prevailing wage and compliance with other statutory requirements.

4. Future Maintenance and Repair of Sewer. At such time in the future as additional maintenance, repair and/or construction of the Sewer is deemed advantageous by City, City will use its best efforts to notify Property Owners in advance of such work and give Property Owner the option to perform the maintenance and repair work. Failure of the City to provide notice to Property Owner of the intent to perform such additional maintenance and/or repair as set forth herein shall not be deemed a default of City under the terms of this agreement nor give rise to a separate cause of action by Property Owner. It is the express intent of the parties that the Hold Harmless covenant of Property Owners set forth in Paragraph 2 shall be binding irrespective of the commitment of the City set forth in this Paragraph to use its best efforts to notify Property Owner in advance of such construction work.

5. Miscellaneous.

a. The parties to this Agreement represent and acknowledge that they have full authority to enter into this Agreement and that by signature below the representatives signing hereto have full authority to execute this Agreement and bind the party for whom they are signing.

b. This Agreement shall be binding on and inure to the benefit of the parties hereof or their successors in interests, assigns and representatives. Mid-Missouri as used herein shall be deemed to be the then owner(s) of the Property.

c. This Agreement shall be governed and construed in accordance with the laws of the State of Missouri without regard to its choice of law provisions.

d. This Agreement may not be modified or amended in any manner except by a written agreement signed by the City and the owner of the Property at the time such amendment is entered into.

e. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The submission of a signature page transmitted by facsimile or e-mail shall be considered as an "original" signature page for purposes of this Agreement so long as the original signature page is substituted for the facsimile or e-mail signature page upon request of any party to this Agreement.

f. This Agreement shall be filed in the land records of Boone County Missouri and shall be binding upon Mid-Missouri and its successors, heirs and assigns and shall continue as a servitude running in perpetuity with the land. This Agreement shall survive any termination of Mid-Missouri's existence.

g. This Agreement shall become effective on the date signed by the last party to affix its signature hereto (the "**Effective Date**")

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates set forth below.

CITY OF COLUMBIA, MISSOURI

By: _____
Name: Mike Matthes, City Manager
Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
)ss.
COUNTY OF BOONE)

On this _____ day of _____ in the year 2015, before me, a Notary Public in and for said state, personally appeared, **Mike Matthes, City Manager of the City of Columbia**, a municipal corporation, who being by me duly sworn, acknowledged that he is the City Manager of the City of Columbia, Missouri and that said instrument was signed in behalf of said City and further acknowledged that he executed the same as a free act and deed for the purposes therein stated and that he has been granted the authority by said City to execute the same.

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

By: _____
Notary Public

MID-MISSOURI SURGERY CENTER, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____ in the year 2015, before me, a Notary Public in and for said state, personally appeared, _____ who being by me duly sworn, acknowledged that they are the Member(s) of **Mid-Missouri Surgery Center, LLC**, a Missouri Limited Liability Company, and that said instrument was signed in behalf of said LLC and further acknowledged that they executed the same as a free act and deed for the purposes therein stated and that they have been granted the authority by said LLC to execute the same.

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

By: _____
Notary Public

MID-MISSOURI REAL ESTATE HOLDINGS, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____ in the year 2015, before me, a Notary Public in and for said state, personally appeared, _____ who being by me duly sworn, acknowledged that they are the Member(s) of **Mid-Missouri Real Estate Holdings, LLC**, a Missouri Limited Liability Company, and that said instrument was signed in behalf of said LLC and further acknowledged that they executed the same as a free act and deed for the purposes therein stated and that they have been granted the authority by said LLC to execute the same.

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

By: _____
Notary Public

Exhibit A
Legal Description

Exhibit B
Storm Sewer Drawing