

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 71-09

AN ORDINANCE

authorizing the City Manager to execute a trail connector license agreement with the Missouri Highways and Transportation Commission for the Hinkson Creek Trail and Old 63 Pedway Project at State Route 740 (Stadium Boulevard); 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 trail connector license agreement with the Missouri Highways and Transportation Commission for the Hinkson Creek Trail and Old 63 Pedway Project at State Route 740 (Stadium Boulevard). The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

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

PASSED this _____ day of _____, 2009.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

CCO FORM: RW28
Approved: 07/07 (AR)
Revised:
Modified:

COUNTY: Boone
CITY: Columbia
ROUTE: 740
Bicycle and Pedestrian Trail
Connector

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRAIL CONNECTOR 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 Route 740 (hereinafter "Rte. 740"), 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 Hinkson Trail/Old 63 Pedway (hereinafter "Trail") located in and along the banks of Hinkson Creek; and

WHEREAS, the City proposes to construct a Bicycle and Pedestrian Trail Connector (hereinafter, "Trail Connector") over the right of way limits of Rte. 740 at highway centerline station 271+62.2, pursuant to the plans and specifications as referred to herein, in order to provide a connection between parts of the Trail from one side of Rte. 740 to the other; 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 Trail Connector, 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) City: This term means the City of Columbia, Missouri to perform the contractual duty or receive the contract benefit specified in this Agreement.

(B) 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.

(C) 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.

(D) Trail, or Bike-Ped Path: Either of the terms, "Trail" or "Bike-Ped Path", refers to the Hinkson Trail/Old 63 Pedway trail system located in Boone County, Missouri, and owned by the City. These terms do *not* include any paved or marked corridor on Commission property, even if that paved or marked corridor is intended for use by bicyclists and pedestrians to transit across the Commission property, to get to a Trail or Bike-Ped Path beyond the Commission property.

(E) Trail Connector: Means only that portion of a paved or marked corridor that is on Commission property, even if that paved or marked corridor is intended for use by bicyclists and pedestrians just to transit across the Commission property, to get to a Trail or Bike-Ped Path beyond the Commission property. The Trail Connector is *not* part of any Trail or Bike-Ped Path lying beyond Commission property.

(2) LICENSE GRANTED: The Commission hereby grants the City, its successors and assigns, a non-exclusive license to build and maintain the Trail Connector across Rte. 740 at the location described on Exhibit "A", and 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.

(3) CONSIDERATION FOR THIS LICENSE: In consideration of the payment of the sum of one dollar (\$1), the receipt of which is hereby acknowledged, the Commission grants this license to the City of Columbia 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 the Trail Connector crossing, only for the purpose of transit from one endpoint of the Trail to the other endpoint, where the Trail resumes adjacent to but off of the Commission's property.

(B) Use of the Trail Connector crossing is prohibited when floodwater is standing on or flowing over the crossing pavement. The parties recognize and acknowledge that the City is designing and operating the Trail in a creek channel known to flash flood numerous times each year. It will be the sole responsibility of the City to provide for the continuous safety of all Trail users by monitoring the Trail conditions and potential for flooding. The City shall also provide signs at least two (2) feet by two (2)

feet approaching the trail connector from both endpoints, allowing for sufficient distance to provide Trail Connector users adequate warning of the potential for dangerous flash floods. The sign specifications and placement shall be constructed in accordance with approved plans and specifications to the satisfaction of the District Engineer or his authorized representatives. The City shall be solely responsible for the maintenance of any signing constructed pursuant to this Agreement.

(C) No recreational use shall be made of this Trail Connector on Commission property. The parties understand and agree that the Commission is making available this Trail Connector crossing to pass from one Trail endpoint to the other Trail endpoint for transportation and access purposes, and not as a component part of the Trail itself.

(D) There will be no express or implied dedication or use of the Trail Connector Commission property for outdoor recreational purposes.

(E) There will be posted on each end of the Commission's Rte. 740 highway property boundaries at or near highway station 272+00) a sign stating that the Hinkson Trail/Old 63 Pedway ends at the Commission's property line. However, Trail users may transit the Commission's property at the paved crossing on the Trail Connector to reach the point where the Hinkson Trail/Old 63 Pedway resumes.

(F) Any map or diagram of the adjacent Trail shall mark and indicate the Trail Connector separately and differently than the Trail, and shall contain a legend that indicates that "The Trail Connector exists to cross state highway property. While it provides access to a recreational trail, it is not part of a bicycle or pedestrian recreational trail."

(4) WORK BY THE CITY: The City shall construct the Trail Connector under the Commission's Rte. 740 from highway station 271+49.7 to highway station 271+75.3 pursuant to the plans and specifications referred to herein, to provide a safe way for Trail Connector users to transit across Commission property by bicycle or on foot. The Commission hereby grants 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. 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 for the transit of Trail users across Commission property by bicycle or on foot, until this license is revoked or terminated by the Commission. The City understands that it and its Trail Connector users shall use this Trail Connector at their own risk.

(5) COMMISSION OWNERSHIP: The Commission reserves the ownership and ultimate use of the property over which the Trail Connector will be located and its adjacent highway property for transportation purposes. This non-exclusive license prohibits the use or conversion of the licensed Trail Connector 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 which the Trail Connector 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 Trail Connector 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 Trail Connector 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) TRAIL CONNECTOR DESIGN: The City and its consulting engineers shall prepare final plans and final specifications for the Trail Connector to be constructed on Commission property by the City. The Trail Connector 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 District 5 Engineer (the "District Engineer"), the final plans and specifications for the Trail Connector and the adjacent segments, for written approval of the District Engineer, before any construction can begin on the Commission property. The general design and location of the Trail Connector is shown on Exhibits "B" and "C", which are attached to this Agreement and incorporated herein by reference.

(8) TRAIL CONNECTOR PLANS APPROVAL: The Commission, through MoDOT, shall either approve or disapprove the final plans and specifications for the Trail Connector 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 will approve those plans.

(9) TRAIL CONNECTOR 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 the City to perform the work contemplated herein. The Trail Connector 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 Trail Connector area subject to this license is attached to this Agreement as Exhibit "A" and "B" incorporated herein by reference.

(11) CONSTRUCTION CONTRACTOR: The Commission acknowledges that the City will enter into a construction contract with an approved contractor (the "Contractor") to construct the Trail Connector and adjacent 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 will be authorized to inspect the work on the Trail Connector 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 agrees that all such inspections shall be conducted in a timely and reasonable manner.

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

(C) Responsible Party for Payment: The Contractor will look solely to the 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.

(12) RESTORATION OF COMMISSION PROPERTY: At all times during and after the construction of the Trail Connector, the City and its Contractor shall maintain the Trail Connector 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 Trail Connector, 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 the City.

(13) 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 approved by the Commission. If and when the highway is expanded, the City is fully responsible for the cost of any required modifications of the Trail Connector.

(14) DURATION OF LICENSE: The Commission and the City agree that this license to design, construct, maintain, and use the Trail Connector 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 and the City as partners or joint venturers, or as jointly liable, in the City's design, construction, maintenance and

operation of the Trail Connector 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 Trail Connector, 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 Trail Connector, 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 shall immediately cease work on or the use of the Trail Connector, 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 Trail Connector, 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 Trail Connector or demolish the structure. The Commission shall have the right to charge all Commission or MoDOT costs of the Trail Connector 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 Trail Connector 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 Rte. 740 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 Trail Connector, the City shall maintain and repair at its own expense the Trail Connector and all related City structures and approaches, 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 Trail Connector 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 Trail Connector.

(21) COMMISSION ACTION IF THE CITY FAILS TO MAINTAIN TRAIL CONNECTOR: If, after written or facsimile notice, the City fails to meet its maintenance obligations to keep the Trail Connector and adjacent Commission property clean, in good appearance and safe for use by the City and its authorized users, the Commission (through MoDOT) shall have the authority, but not a duty or obligation, to maintain or repair the Trail Connector on Commission property and charge all such costs of maintenance and repair to the City. If the 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 Trail Connector 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 Trail Connector promptly, after the Commission or MoDOT give written notice of a worn, damaged or dangerous location on the Trail Connector, 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 Trail Connector 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 Trail Connector 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 insure the safety of the Trail Connector for the traveling public.

(B) The City shall be responsible for promptly submitting copies of all written annual or other Trail Connector inspection reports to the following: (1) To the Commission's District Engineer having responsibility for Rte. 740; and (2) To the Commission's State Bridge Maintenance Engineer, located in the Commission Headquarters Building in Jefferson City, Missouri.

(23) INDEMNIFICATION, DEFENSE OF AND HOLDING THE COMMISSION

HARMLESS: The City shall be responsible for injury or damages as a result of the City's negligent acts or omissions in the design, construction, use, maintenance, repair and inspection of the Trail Connector. The same liability applies to the City derivatively for the negligent acts or omissions of the City's contractors and subcontractors, in their construction, maintenance or repair of the Trail Connector. In addition to the liability imposed upon the City for personal injury, bodily injury (including death or property damage) suffered as a result of the negligent design, construction, use, maintenance, repair or inspection of the Trail Connector, the City assumes the obligation to save harmless the Commission, MoDOT and their officials, agents, employees, representatives and assigns, and to indemnify and defend them from all liability, loss, cost and expense, including legal fees, arising out of the negligent design, construction, use, maintenance, repair or inspection of the Trail Connector. The duty to indemnify, defend and hold harmless the Commission, MoDOT 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, MoDOT and others as set forth in this section does not create or give any rights to third persons or entities who are not parties to this Agreement. It is the intent of the parties that the Commission is not to incur or bear any liability whatsoever from the City's utilization of Commission property for the construction and public operation of the Trail Connector.

(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 Trail Connector, 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 Trail Connector, 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 Four Hundred Thousand Dollars (\$400,000) per person and Two Million Five Hundred Thousand Dollars (\$2,500,000) 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 the 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 Trail Connector on Commission property, for as long as that Trail Connector remains open for public use of it and the adjacent 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 Trail Connector 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 other City and MoDOT authorized staff, and to no other person or entity.

(28) REVOCAION OF AGREEMENT: This license to construct, maintain, and use the Trail Connector for Trail users to transit across Commission property by bicycle or on foot 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 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;

(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 the City will not repair the Trail Connector 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 Trail Connector, without prior written approval of the Commission;

(F) Violation of Laws: The City constructs, operates, uses or maintains the Trail Connector 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 Trail Connector 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 Trail Connector to accommodate the Commission's redesign.

(29) RIGHT TO ENTER UPON THE TRAIL CONNECTOR:

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

(C) Inspections: The Commission, MoDOT, and their officials, employees, agents and representatives shall have the right to make periodic inspections of the Trail Connector when they deem such inspections necessary or advisable, at any time that the Trail Connector 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 Trail Connector 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 Trail Connector 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 Trail Connector.

(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 the 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 TRAIL CONNECTOR: In the event the license to maintain the Trail Connector or this Agreement is revoked, and the Commission deems it necessary to request the removal of the Trail Connector, 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 Trail Connector removal to be 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 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 the City.

(33) UTILITY RELOCATION: With respect to any utility facilities requiring relocation or adjustment in connection with the construction of the Trail Connector, 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 the 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 Trail Connector.

(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 or district 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 Trail Connector.

(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 the City in the implementation of this Agreement, or in the City's design, construction, maintenance, repair, use or inspection of the Trail Connector.

(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:
Mike Hood, Parks and Recreation Director
701 East Broadway, Columbia, MO 65201

Facsimile No: _____

- (B) To the Commission:
Roger Schwartze, District Engineer
1511 Missouri Blvd., Jefferson City, MO 65102

Facsimile No: 573-522-1059

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.

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

Executed by the City this _____ day of _____, 2008.

Executed by the Commission this _____ day of _____, 2008.

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

CITY OF COLUMBIA

By: _____

By: _____

Title _____

Title _____

Attest: (SEAL)

Attest: (SEAL)

Secretary to the Commission

By: _____

Title: _____

Approved as to Form:

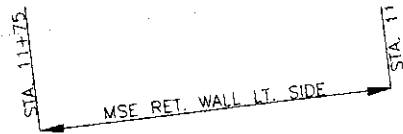
Approved as to Form:

Commission Counsel

By: _____

Title: _____

Ordinance No. _____



R=65'

R.O.W.

guardrail

STA. 273+00

MODOT STADIUM BLVD (RT 740)

STADIUM BLVD. - RT 740

guardrail 4' conc. sidewalk

BRIDGE ABOVE

LICENSED AREA

STA. 272+00

EX. PIERS

2

10+00

25.0'

17.5'

7.5'

5.29'

67.5'

TEMPORARY LICENSED CONSTRUCTION AREA

3

9+00

25.0'

17.5'

TYPE II ROCK BLANKET

HINKSON CREEK

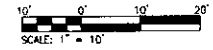
R=60'

STA. 271+00

AERIAL EASEMENT DATA:
ALL STATIONS AND OFFSETS
ARE FROM THE CENTERLINE
OF STADIUM BLVD (RT 740).

①	STA. 271+49.7, 48.0' RT.
②	STA. 271+74.7, 48.0' RT.
③	STA. 271+75.3, 19.5' LT.
④	STA. 271+50.3, 19.5' LT.
⑤	STA. 271+32.8, 19.5' LT.
⑥	STA. 271+32.2, 48.0' RT.

AERIAL EASEMENT DATA EXHIBIT A



HNTB

HNTB Corporation
The HNTB Companies
Architects Engineers Planners
18 South Broadway, Suite 400
St. Louis, Missouri 63102
PH (314) 241-2800 FAX (314) 241-1814

OWNER/DEVELOPER:

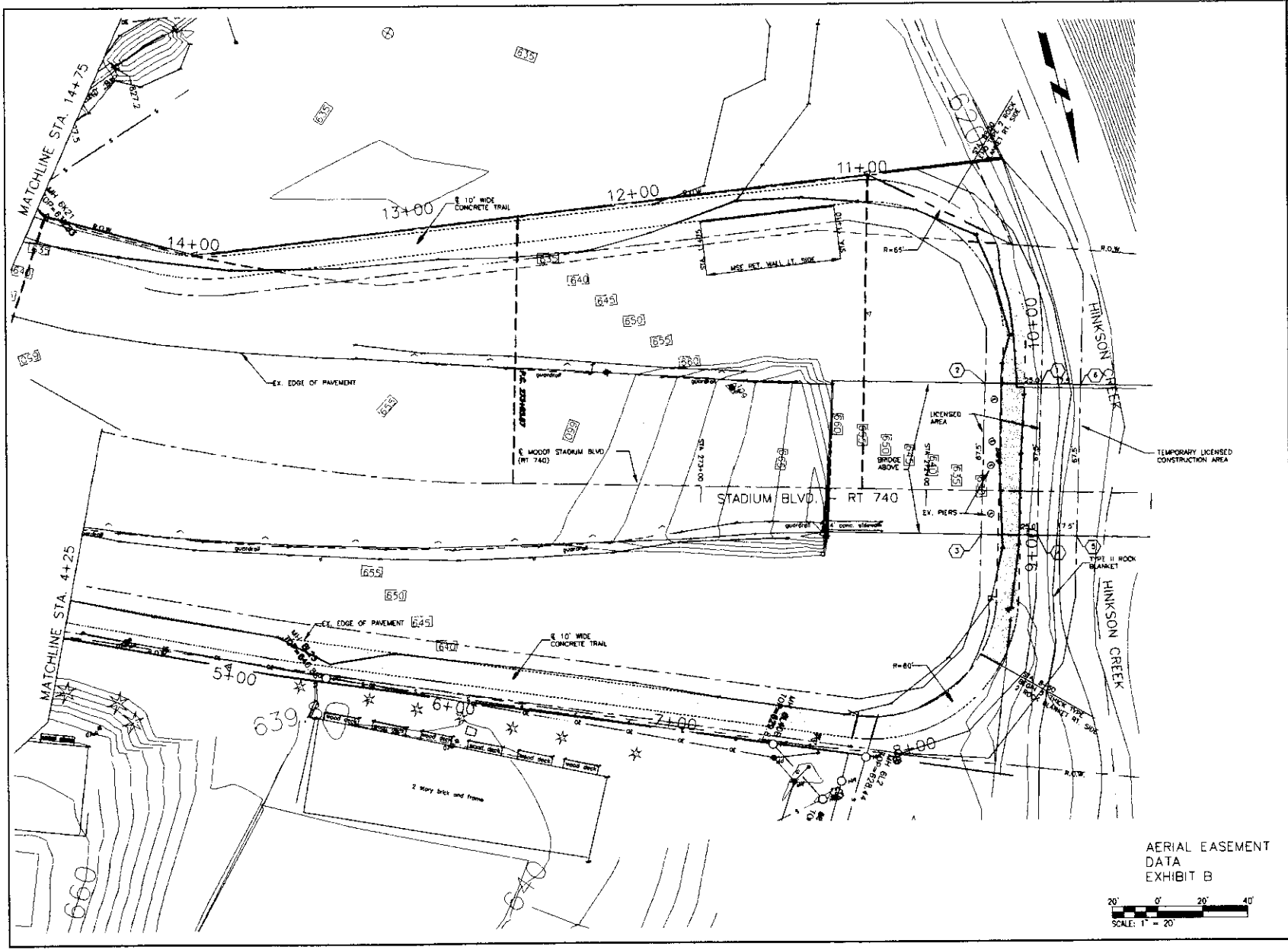
Columbia Parks & Recreation Department
Columbia, MO 65202 - 7202
878-874-7888 PH
878-878-3484 FX

Hinkson Trail / Old 63 Pedway
Columbia, Missouri

PRELIMINARY:
NOT FOR
CONSTRUCTION

May 18, 2006

DATE	304
NO.	304
BY	
CHKD BY	
DATE	
NO.	
BY	
CHKD BY	
DATE	
NO.	
BY	
CHKD BY	
DATE	



HNTB
 HNTB Corporation
 The HNTB Companies
 Architects Engineers Planners
 90 South Broadway, Suite 400
 St. Louis, Missouri 63102
 PH (314) 241-2800 FAX (314) 241-1914

OWNER/DEVELOPER:

 Columbia Parks
 &
 Recreation Department
 Columbia, MO 65202 - 7202
 575-676-7888 P
 575-676-3188 F

**Hinkson Trail /
 Old 63 Pedway**
 Columbia, Missouri

**PRELIMINARY:
 NOT FOR
 CONSTRUCTION**

DATE	May 12, 2008
PREPARED FOR	305 SUBMITTAL
PROJECT NO.	0801
DRAWN BY	SHANE W.
CHECKED BY	CHRISTOPHER W.
APPROVED BY	ARCHITECTURAL BY
PROJECT MGR	GLYNIS W.

AERIAL EASEMENT
 DATA
 EXHIBIT B



HNTB
 HNTB Corporation
 The HNTB Companies
 Architects Engineers Planners
 31 South Broadway, Suite 400
 St. Louis, Missouri 63102
 PH (314) 581-0800 FAX (314) 581-4974

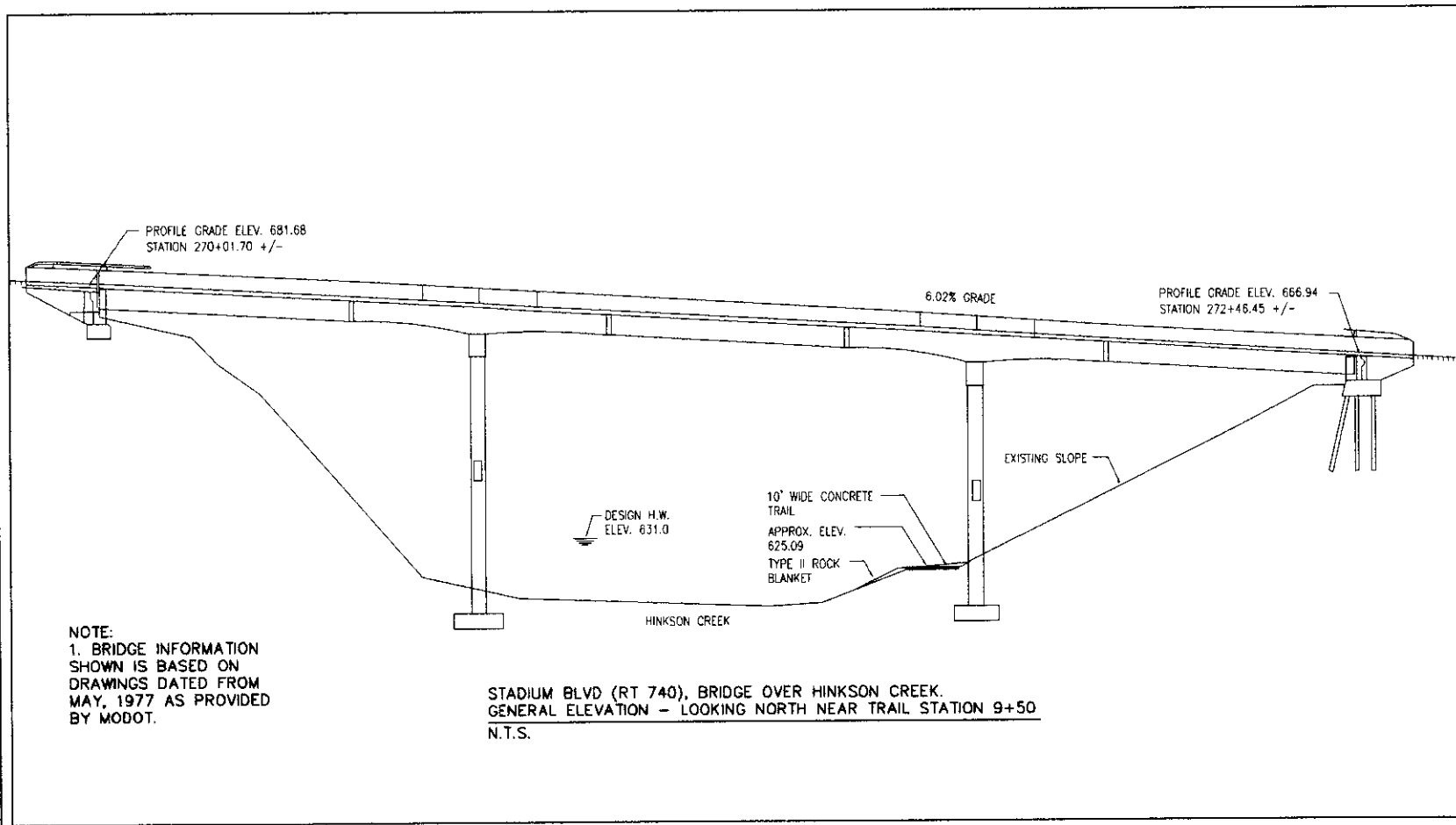
OWNER/DEVELOPER:

Columbia Parks
 &
 Recreation Department
 Columbia, MO 65202 - 7202
 572-54-7883 PH
 572-575-3100 FX

Hinkson Trail /
 Old 63 Pedway
 Columbia, Missouri

PRELIMINARY:
 NOT FOR
 CONSTRUCTION

DATE	REV. 18, 2008
DESIGNED FOR:	SRM, SUBMITTAL
PROJECT NO.	ASSET
DRAWN BY	DESIGNED BY
CHECKED BY	APPROVED BY
APPROVED BY	DATE
APPROVED BY	DATE
APPROVED BY	DATE
APPROVED BY	DATE
APPROVED BY	DATE



NOTE:
 1. BRIDGE INFORMATION
 SHOWN IS BASED ON
 DRAWINGS DATED FROM
 MAY, 1977 AS PROVIDED
 BY MODOT.

STADIUM BLVD (RT 740), BRIDGE OVER HINKSON CREEK.
 GENERAL ELEVATION - LOOKING NORTH NEAR TRAIL STATION 9+50
 N.T.S.

AERIAL EASEMENT
 DATA
 EXHIBIT C

Exhibit D

Licensed Area

An irregular shaped parcel of land situate in the City of Columbia, Boone County, Missouri. Said parcel being described from the centerline of Stadium Blvd (Rt 740). Stationing is referenced from MoDOT plans dated October, 1965. Station point 277+62.42 a point 1,035 South and 256' East of the NE Corner NW ¼ Section 19, Township 48 North, Range 12 West (MoDOT roadway plans dated October, 1965).

Beginning at a point 48.0 feet right of station 271+49.7; thence easterly 25.0 feet to a point 48.0 feet right of station 271+74.7; thence northerly 67.5 feet to a point 19.5 feet left of station 271+75.3; thence 25.0 feet westerly to a point 19.5 left of station 271+50.3; thence southerly 67.5 feet to the point of beginning and containing 1,689 square feet.

Temporary Licensed Construction Area

An irregular shaped parcel of land situate in the City of Columbia, Boone County, Missouri. Said parcel being described from the centerline of Stadium Blvd (Rt 740). Stationing is referenced from MoDOT plans dated October, 1965. Station point 277+62.42 a point 1,035 South and 256' East of the NE Corner NW ¼ Section 19, Township 48 North, Range 12 West (MoDOT roadway plans dated October, 1965).

Beginning at a point 48.0 feet right of station 271+32.2; thence easterly 17.5 feet to a point 48.0 feet right of station 271+49.7; thence southerly 67.5 feet to a point 19.5' left of station 271+50.3'; thence westerly 17.5 feet to a point 19.5 feet left of station 271+32.8; thence northerly 67.5 to the point of beginning and containing 1,182 square feet.

MISSOURI STATE HIGHWAY DEPARTMENT

NO.	DATE	BY	CHKD.	REVISION
1	DEC 77	JL		

GENERAL NOTES:
 Design Specifications: A.A.S.H.T.O-1973

Design Loading:
 HS20-44 - No Future Wearing Surface
 Earth 1974 Equivalent Fluid Pressure 50' Fatigue Stress - Case II Interim 1974

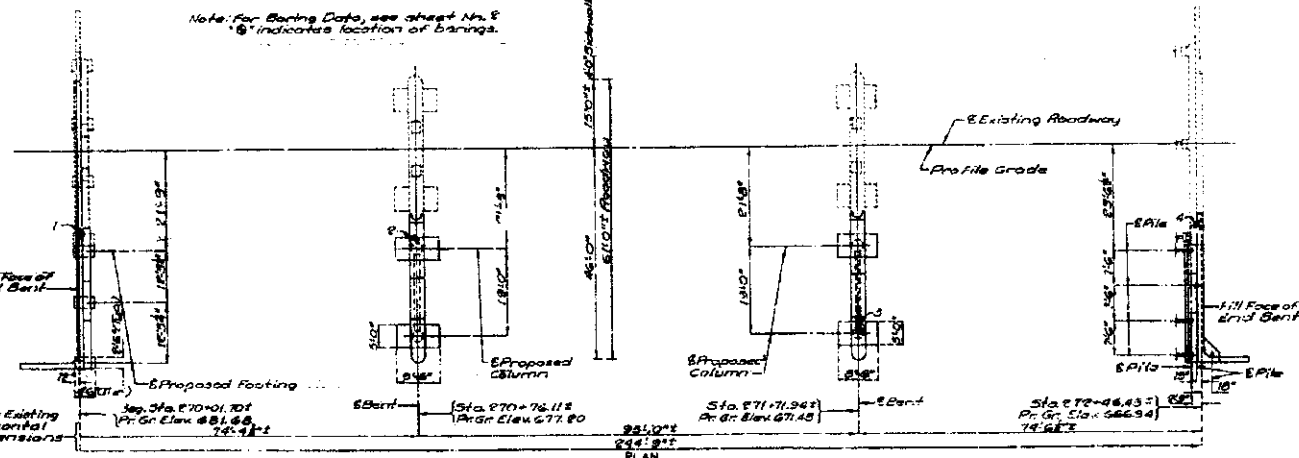
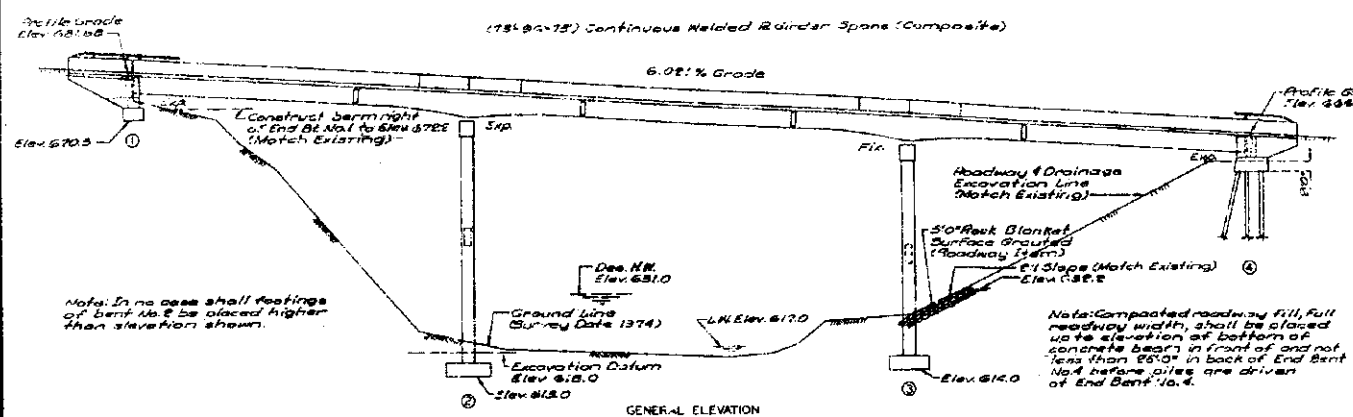
Design Unit Stresses:
 Class B Concrete (Substructure) $f_c = 4,000$ psi
 Class B Concrete (Superstructure) $f_c = 3,000$ psi
 Reinforcing Steel (Grade 40) $f_s = 60,000$ psi
 Structural Carbon Steel $f_s = 70,000$ psi
 Steel Pile $F_y = 50,000$ psi

Fabricated Steel:
 Field connections, High Strength Bolts $\frac{3}{4}$ "
 holes $\frac{1}{8}$ " except as noted.

Paint:
 System 10" or 12" by contractor in accordance with Std. Spec. 712.18. Color of the final field coat shall be aluminum.
 Traffic Maintenance:
 Traffic over structure to be maintained during construction.

Reinforcing Steel:
 Minimum clearance to reinforcing steel shall be 1" unless otherwise shown.

Existing Work:
 Outline of old work is indicated by light dashed lines. Heavy lines indicate new work.
 Bars bonded in old concrete not removed shall be cleanly cut and embedded into new concrete where possible. If length and space is available, old bars shall extend into new concrete of least 40 diameters for smooth bars and 30 diameters for deformed bars.



ESTIMATED QUANTITIES				
ITEM	CLASS	SUBSTR.	SUPERSTR.	TOTAL
Class 1 Excavation	CLASS	140		140
Class 2 Excavation	CLASS	84		84
Asphalt Concrete	Ton		15.4	15.4
Mineral Aggregate (Asphaltic Conc. (Special Mix))	Ton		252	252
Structural Steel Pile (A572-50) (L.F.)	LB	230		230
Class B Concrete	CUBIC	144.4		144.4
Class B Concrete	CUBIC		292.5	292.5
Steel Reinforced Elastomeric Bearings (Rubber Seal) (Standard)	EA		61	61
Reinforcing Steel	LB	26,180	66,070	92,250
Bridge Deck Waterproofing (Liquid)	Sq. Yd		1658	1658
Fabricated Structural Carbon Steel (L.F.)	LB		108,860	108,860
Roofs (System 7) or 8) (Standard)	Sq. Yd		78.0	78.0
Bridge Rail (One Side)	LINEAL FT.		26.7	26.7
Special Work	Lump Sum			1

Note: All concrete and rebar shall be placed with superstructure quantities.
 & Elev. 66.5' @ 10' in center of E. HWY on Bus. Rt. 63 in front of Standard Sen. Sta.

HYDRAULIC DATA	
Drainage Area = 54 Sq. Mi. (L.E. Hilly)	
Design Discharge = 5730 cfs.	
Design H.W. Elev. = 681.0	
Frequency = 50 Yrs.	

BEARING PILE	PILE & FOOTING DATA				
	BENT NO.	1	2	3	
BEARING PILE	Pile Type and Size			HP10X60	
	Number			4	
	Approximate Length			48	
SPREAD FOOTINGS	Design Bearing	Tons		33	
	Hammer Energy Required	FT-LB		8500	
	Foundation Material				
Design Capacity		Tons/Sq. Ft.	7	4	7

Minimum energy requirement of hammer based on plan length and design bearing value of piles.
 All pile shall be driven to practical refusal.

BRIDGE OVER HINKSON CREEK
 STATE ROAD FROM COLLEGE AVE. TO BUS. RTE 53
 IN COLUMBIA

PROJECT NO. **STA. 270+01.70**
 JOB NO. **RTE 740**
 BOONE **COUNTY**

DESIGNED MAY 1977
 DETAILED MAY 1977
 CHECKED JUNE 1977

Sheet No. 4 of 46

DATE 7/9/77

STD.
STD. 706.15
A-1256R

ROLL 884

29

Note: This drawing is not to scale. Follow dimensions.

Source: Mike Hood

MH

Agenda Item No. _____

FISCAL NOTES:

TO: City Council
FROM: City Manager and Staff
DATE: March 6, 2009
RE: Missouri Highways and Transportation
Commission Trail Connector License Agreement

MH

City Fiscal Impact Enter all that apply:	
\$0	City's current net FY cost.
\$0	Amount of Funds Already appropriated
\$0	Amount of budget amendment needed
\$0	Estimated 2 yr net costs:
\$0	One-time
\$0	Operating / On-going
Program Impact:	
N	New program/ agency (Y/N)
N	Duplicates/expands an existing program (Y/N)
N	Fiscal impact on any local political subdivision (Y/N)
Resources Required:	
N	Requires add'l FTE personnel? (Y/N)
N	Requires additional facilities? (Y/N)
N	Requires additional capital equipment? (Y/N)
Mandates:	
Y	Federal or state mandated? (Y/N)

SUMMARY: The Department of Parks and Recreation is requesting an ordinance approving the Missouri Highways and Transportation Commission Trail Connector License Agreement for the Hinkson Creek Trail and Old 63 Pedway Project No. STP-2100 (518) over the right of way limits of Rte. 740 (Stadium Blvd) in order to provide a connection between parts of the Trail from one side of Rte. 740 to the other.

DISCUSSION: The Missouri Highways and Transportation Commission requires that an Trail Connector License Agreement be initiated at this location. The Trail Connector License Agreement at Rte. 740 will fulfill the City's legal obligation with MoDot and the requirement of the Hinkson Creek Trail and Old 63 Pedway Project No. STP-2100 (518) Enhancement Grant that has been awarded to the City for the development of this project.

The Parks and Recreation Department is requesting the approval of the Trail Connector License Agreement and the authorization to submit the Rte. 740 Trail Connector License Agreement to the State in fulfillment of the Transportation Enhancement Grant requirements.

FISCAL IMPACT: Approval of this license agreement will have no direct fiscal impact on City operations. However, this agreement is required in order for the City to proceed with Phase I of the Hinkson Creek Trail, Grindstone Nature Area to Stephens Lake Park. That project has an estimated capital improvement cost of \$780,000 and an annual operating expense of \$1,600.

SUGGESTED COUNCIL ACTION: Approve the ordinance authorizing the approval of the Missouri Highways and Transportation Commission Trail Connector License Agreement for the Hinkson Creek Trail and Old 63 Pedway Project No. STP-2100 (518) over the right of way limits of Rte. 740 (Stadium Blvd).