

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 141-11

AN ORDINANCE

authorizing the City Manager to execute license agreements with the Missouri Highways and Transportation Commission for the Hominy Trail West Connections under Route WW and U.S. Route 63; 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 license agreement with the Missouri Highways and Transportation Commission for the Hominy Trail West Connection under Route WW. 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. The City Manager is hereby authorized to execute a license agreement with the Missouri Highways and Transportation Commission for the Hominy Trail West Connection under U.S. Route 63. The form and content of the agreement shall be substantially as set forth in "Attachment B" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2011.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

CCO Form: RW37
Approved: 01/09 (ASB)
Revised: 01/11 (ASB)
Modified:

BOONE COUNTY
ROUTE WW

**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 COLUMBIA** (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains Route WW (hereinafter, "Highway") as part of the State Highway System in Boone 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 Route WW at centerline station 59+98;

WHEREAS, the City desires to use that portion of the Commission property limits of Route WW at centerline station 59+98, (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 under the bridge and connection to Broadway in the Commission property limits of Route WW lying between centerline station 59+24 and centerline station 63+50, pursuant to the plans and specifications as referred to herein, in order to provide a safe crossing of a Public Trail Connector for pedestrian/bicycle trail travelers. 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 concrete 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 District 5 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 March 31, 2030. 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) REQUIRED INSPECTIONS OF STRUCTURE:

(A) Upon completion of the construction of any structure on or over the Commission's property, the City, and any successors in interest of the City, shall be required to have scheduled inspections of said structure to ensure the safety of the traveling public. All inspections shall be done in accordance with the current version of the National Bridge Inspection Standards as found in 23 CFR 650 Subpart C.

(B) The City shall be responsible for maintaining inspection records and shall promptly submit all written inspection reports, photographs, and other inspection related information along with a cover letter highlighting any structural deficiencies found to the following: (1) To the Commission District Engineer having responsibility for the roadway above or under the Proposed Structure; (2) To the Commission's State Bridge Maintenance Engineer, 105 W. Capitol, Jefferson City, Missouri.

(20) 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, or district engineer's authorized representative, prior to working on the Commission's property, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer, or district engineer's authorized representative, will not be required for work outside of the Commission's property; and

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

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(21) ASSUMPTION OF RISK AND RELEASE:

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

(22) REVOCAION 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 the Trail Connector will be allowed, as approved by the Commission in the plans submitted by the City for this product.

(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 Columbia, Missouri:
Mike Hood, Parks and Recreation Director
701 East Broadway
Columbia, MO 65201
Phone: 573-874-7460

- (B) To the Commission:
Roger Schwartze, District Engineer
1511 Missouri Blvd.
P.O. Box 718
Jefferson City, MO 65102
Phone: 573-751-7687

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.

(39) 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, which was not caused by or as a result of any negligent, reckless, or intentional act of the Commission or MoDOT. Such insurance protection of the Commission shall be in the minimum limits of Five Hundred Thousand Dollars (\$500,000) per person and Three Million Dollars (\$3,000,000) per occurrence (or higher, as those limits may be increased under Section 537.600 RSMo). If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the Commission to the 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 on Commission property, for as long as that trail 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.

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

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

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

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

THE CITY OF COLUMBIA, MISSOURI

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. _____

EXHIBIT A - ROUTE WW - HOMINY TRAIL WEST

Curve Name	PI	PC	PT	Δ	D	L	T	R
CURVE HOM-5	16+32.17	16+42.08	17+38.77	36° 56' 00.1" (LT)	38' 11"	49.9'		
CURVE HOMINY-6	22+26.35	22+08.65	22+43.69	20° 04' 42.4" (RT)	57' 17"	44.8'		
CURVE HOMINY-7	23+53.13	23+36.01	23+70.23	3° 55' 16.6" (RT)	11' 27"	33.0'		
CURVE HOMINY-8	25+51.94	25+27.03	25+75.85	27° 58' 26.9" (LT)	57' 17"	44.8'		
CURVE HOMINY-9	28+00.66	27+58.98	28+41.16	23° 32' 35.0" (RT)	28' 39"	52.4'		
CURVE HOMINY-10	30+36.02	30+01.11	30+58.52	82° 13' 51.7" (RT)	143' 13"	22.0'		
CURVE HOMINY-11	32+15.13	31+37.46	32+57.89	92° 00' 24.1" (LT)	76' 23"	39.7'		

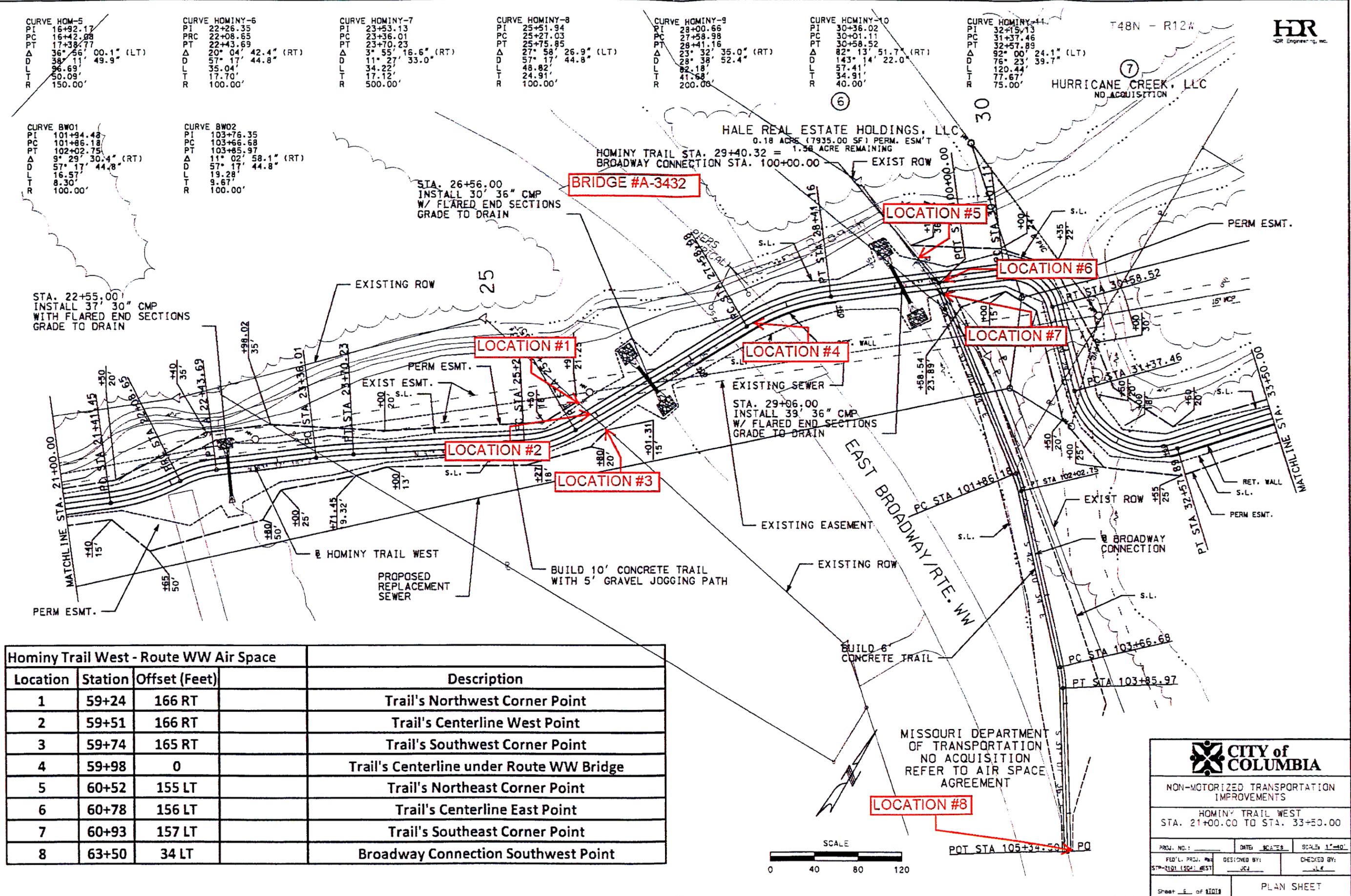
Curve Name	PI	PC	PT	Δ	D	L	T	R
CURVE BWO1	101+94.48	101+86.18	102+02.75	9° 29' 30.4" (RT)	57' 17"	44.8'		
CURVE BWO2	103+76.35	103+66.68	103+85.97	11° 02' 58.1" (RT)	19.28'	9.67'		

STA. 22+55.00
INSTALL 37' 30" CMP
WITH FLARED END SECTIONS
GRADE TO DRAIN

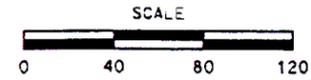
STA. 26+56.00
INSTALL 30' 36" CMP
W/ FLARED END SECTIONS
GRADE TO DRAIN

HALE REAL ESTATE HOLDINGS, LLC
0.18 ACRES (7935.00 SF) PERM. ESM'T
1.38 ACRE REMAINING

HURRICANE CREEK, LLC
NO ACQUISITION



Location	Station	Offset (Feet)	Description
1	59+24	166 RT	Trail's Northwest Corner Point
2	59+51	166 RT	Trail's Centerline West Point
3	59+74	165 RT	Trail's Southwest Corner Point
4	59+98	0	Trail's Centerline under Route WW Bridge
5	60+52	155 LT	Trail's Northeast Corner Point
6	60+78	156 LT	Trail's Centerline East Point
7	60+93	157 LT	Trail's Southeast Corner Point
8	63+50	34 LT	Broadway Connection Southwest Point



MISSOURI DEPARTMENT OF TRANSPORTATION
NO ACQUISITION
REFER TO AIR SPACE AGREEMENT

CITY of COLUMBIA
NON-MOTORIZED TRANSPORTATION IMPROVEMENTS
HOMINY TRAIL WEST
STA. 21+00.00 TO STA. 33+50.00

PROJ. NO.: _____ DATE: _____ SCALE: 1"=40'
DESIGNED BY: _____ CHECKED BY: _____
SHEET NO. _____ OF _____ PLAN SHEET

\$FILES \$TIMES \$DATES

EXHIBIT C - Route WW - HOMINY TRAIL WEST



CURVE HOM-5	CURVE HOMINY-6	CURVE HOMINY-7	CURVE HOMINY-8	CURVE HOMINY-9	CURVE HOMINY-10	CURVE HOMINY-11
PI 16+32.17	PI 22+26.35	PI 23+53.13	PI 25+51.94	PI 28+00.66	PI 30+36.02	PI 32+15.13
PC 16+42.88	PC 22+08.65	PC 23+36.01	PC 25+27.03	PC 27+58.98	PC 30+01.11	PC 31+37.46
PT 17+38.77	PT 22+43.69	PT 23+70.23	PT 25+75.85	PT 28+41.16	PT 30+58.52	PT 32+57.89
Δ 36° 56' 00.1" (LT)	Δ 20° 04' 42.4" (RT)	Δ 3° 55' 16.6" (RT)	Δ 27° 58' 26.9" (LT)	Δ 23° 32' 35.0" (RT)	Δ 82° 13' 51.7" (RT)	Δ 92° 00' 24.1" (LT)
D 38' 11' 49.9"	D 57' 17' 44.8"	D 11' 27' 33.0"	D 57' 17' 44.8"	D 28' 38' 52.4"	D 143' 14' 22.0"	D 76' 23' 39.7"
L 36.69'	L 35.04'	L 34.22'	L 48.82'	L 82.18'	L 57.41'	L 120.44'
T 50.09'	T 17.70'	T 17.12'	T 24.91'	T 41.68'	T 34.91'	T 77.67'
R 150.00'	R 100.00'	R 500.00'	R 100.00'	R 200.00'	R 40.00'	R 75.00'

CURVE BWO1	CURVE BWO2
PI 101+94.48	PI 103+76.35
PC 101+86.18	PC 103+66.68
PT 102+02.75	PT 103+85.97
Δ 9° 29' 30.4" (RT)	Δ 11° 02' 58.1" (RT)
D 57' 17' 44.8"	D 57' 17' 44.8"
L 16.57'	L 19.28'
T 8.30'	T 9.67'
R 100.00'	R 100.00'

STA. 22+55.00
INSTALL 37' 30" CMP
WITH FLARED END SECTIONS
GRADE TO DRAIN

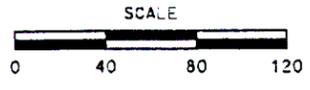
STA. 26+56.00
INSTALL 30' 36" CMP
W/ FLARED END SECTIONS
GRADE TO DRAIN

HALE REAL ESTATE HOLDINGS, LLC
0.18 ACRE (7935.00 SF) PERM. ESMT
HOMINY TRAIL STA. 29+40.32 = 1.58 ACRE REMAINING
BROADWAY CONNECTION STA. 100+00.00

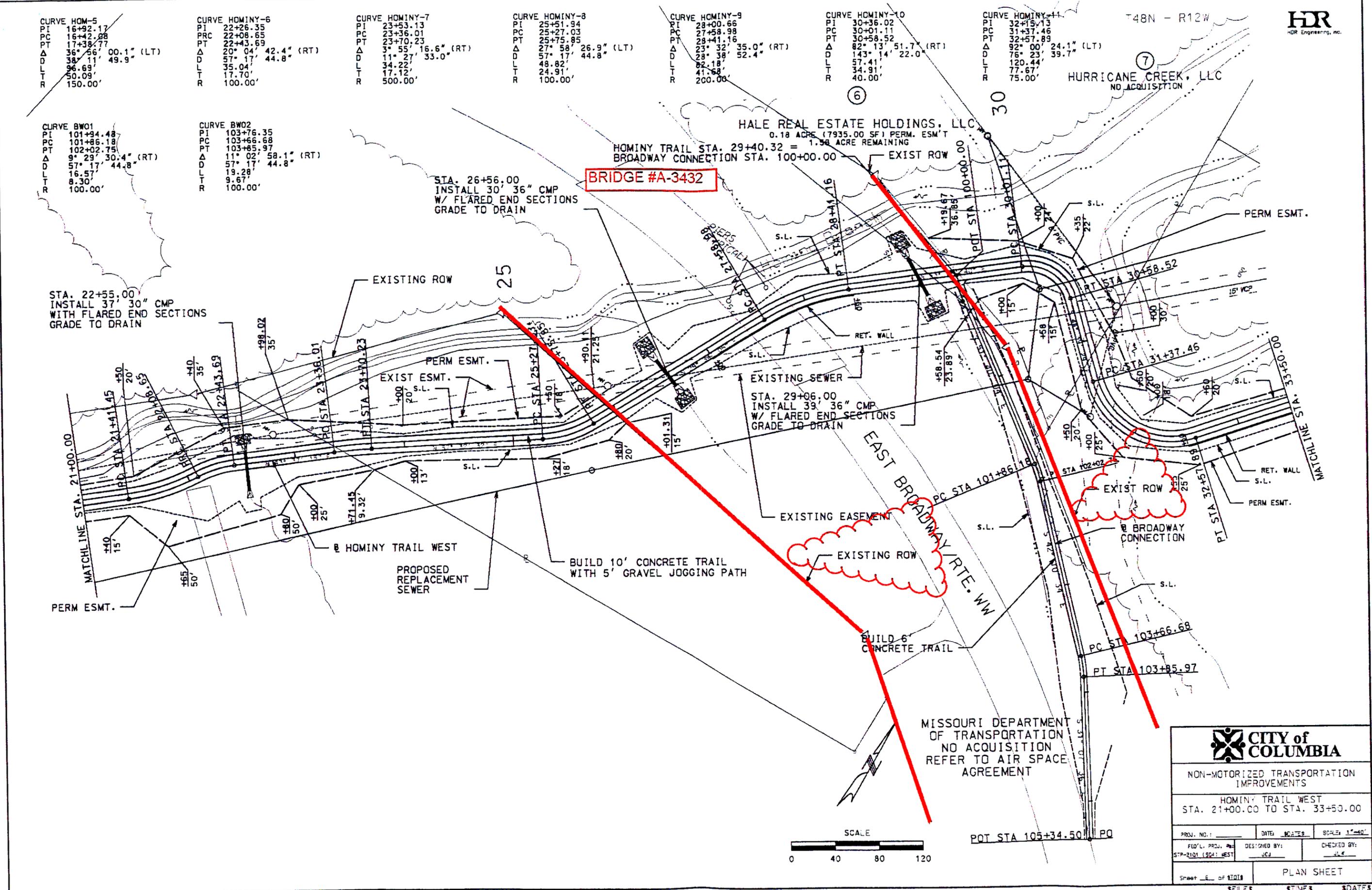
BRIDGE #A-3432

STA. 29+06.00
INSTALL 39' 36" CMP
W/ FLARED END SECTIONS
GRADE TO DRAIN

MISSOURI DEPARTMENT
OF TRANSPORTATION
NO ACQUISITION
REFER TO AIR SPACE
AGREEMENT



NON-MOTORIZED TRANSPORTATION IMPROVEMENTS		
HOMINY TRAIL WEST STA. 21+00.00 TO STA. 33+50.00		
PROJ. NO.:	DATE:	SCALE: 1"=40'
FED'L. PROJ. #:	DESIGNED BY:	CHECKED BY:
STP-2101 (SQ) WEST	JCJ	JLW
Sheet 6 of 10		PLAN SHEET
FILES	TIME	DATES



CCO Form: RW37
Approved: 01/09 (ASB)
Revised: 01/11 (ASB)
Modified:

BOONE COUNTY
ROUTE US 63

**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 COLUMBIA** (hereinafter, "City").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains US Route 63 (hereinafter, "Highway") as part of the State Highway System in Boone 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 US Route 63 Southbound Ramp at centerline station 9+62 West Side and US Route 63 Northbound Ramp at centerline station 9+53 East Side;

WHEREAS, the City desires to use that portion of the Commission property limits of US Route 63, (hereinafter, "Trail Connector") for the users of the Trail to cross Commission property of US Route 63 Southbound Ramp at centerline station 9+62 West Side and US Route 63 Northbound Ramp at centerline station 9+53 East Side 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 concrete surface on the Trail Connector under bridges in the Commission Property limits of US Route 63 Southbound Ramp West Side at highway centerline station 9+62 to 10+79 and of US Route 63 Northbound Ramp East Side at highway centerline station 9+53 to 10+20, pursuant to the plans and specifications as referred to herein, in order to provide a safe crossing of a Public Trail Connector's pedestrian/bicycle trail travelers. 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 concrete 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 District 5 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 March 31, 2030. 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) REQUIRED INSPECTIONS OF STRUCTURE:

(A) Upon completion of the construction of any structure on or over the Commission's property, the City, and any successors in interest of the City, shall be required to have scheduled inspections of said structure to ensure the safety of the traveling public. All inspections shall be done in accordance with the current version of the National Bridge Inspection Standards as found in 23 CFR 650 Subpart C.

(B) The City shall be responsible for maintaining inspection records and shall promptly submit all written inspection reports, photographs, and other inspection related information along with a cover letter highlighting any structural deficiencies found to the following: (1) To the Commission District Engineer having responsibility for the roadway above or under the Proposed Structure; (2) To the Commission's State Bridge Maintenance Engineer, 105 W. Capitol, Jefferson City, Missouri.

(20) 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, or district engineer's authorized representative, prior to working on the

Commission's property, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer, or district engineer's authorized representative, will not be required for work outside of the Commission's property; and

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

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(21) ASSUMPTION OF RISK AND RELEASE:

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

(22) REVOCAION 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 the Trail Connector will be allowed, as approved by the Commission in the plans submitted by the City for this product.

(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 Columbia, Missouri:
Mike Hood, Parks and Recreation Director
701 East Broadway
Columbia, MO 65201
Phone: 573-874-7460

- (B) To the Commission:
Roger Schwartze, District Engineer
1511 Missouri Blvd.
P.O. Box 718
Jefferson City, MO 65102
Phone: 573-751-7687

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.

(39) 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, which was not caused by or as a result of any negligent, reckless, or intentional act of the Commission or MoDOT. Such insurance protection of the Commission shall be in the minimum limits of Five Hundred Thousand Dollars (\$500,000) per person and Three Million Dollars (\$3,000,000) per occurrence (or higher, as those limits may be increased under Section 537.600 RSMo). If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the Commission to the 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 on Commission property, for as long as that trail 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.

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

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

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

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

THE CITY OF COLUMBIA, MISSOURI

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. _____

EXHIBIT A - US ROUTE 63 - HOMINY TRAIL WEST



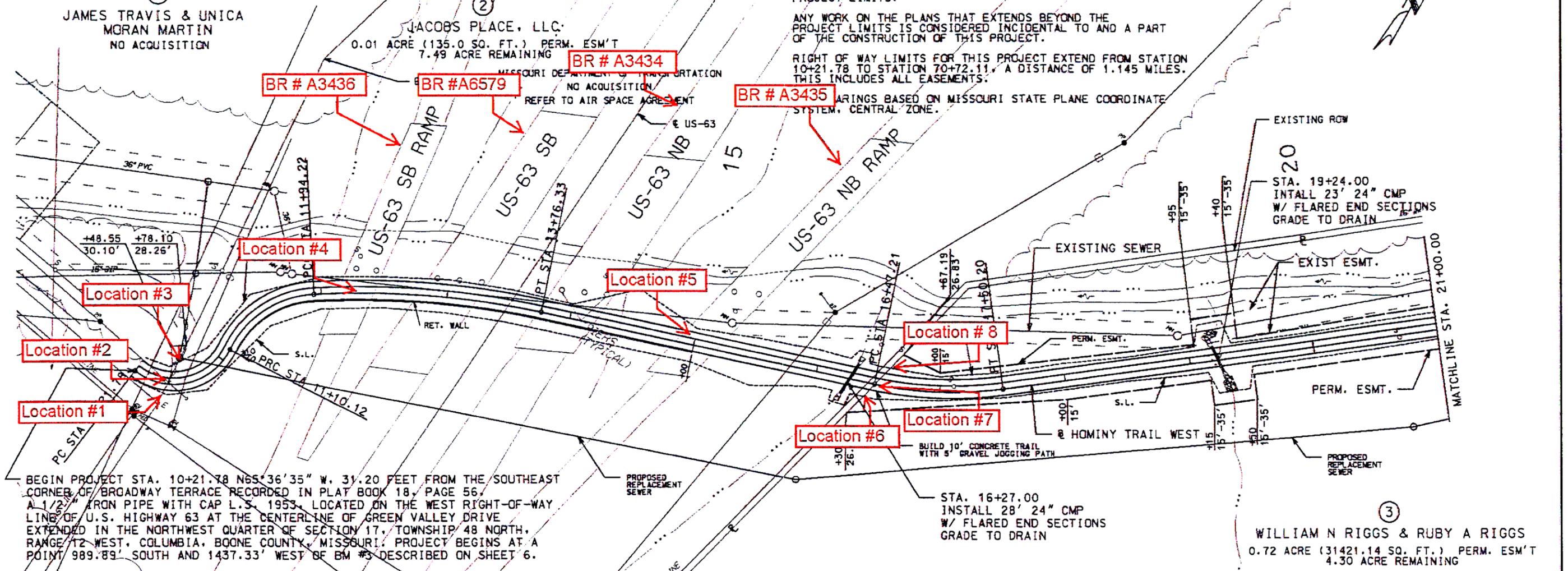
Curve	PI	PC	PT	Δ	D	L	T	R
CURVE HOMINY-1	10+82.69	10+21.78	11+10.12	101° 13' 55.0" (LT)	114° 35' 29.6"	88.34'	60.91'	50.00'
CURVE HOMINY-2	11+56.52	11+10.12	11+94.22	60° 13' 34.4" (RT)	711° 37' 11.0"	84.09'	46.40'	80.00'
CURVE HOMINY-3	12+85.79	11+94.22	13+76.33	14° 54' 22.8" (RT)	8° 11' 06.4"	182.12'	91.57'	700.00'
CURVE HOMINY-4	16+99.21	16+47.21	17+50.20	19° 40' 10.7" (LT)	19° 05' 54.9"	102.99'	52.01'	300.00'

UNDER GROUND FACILITIES, STRUCTURES AND UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE SURVEY AND RECORDS. THE ENGINEER DOES NOT WARRANT THE LOCATIONS OF THESE FACILITIES AS PRECISE. IT IS POSSIBLE THERE MAY BE OTHERS, THE EXISTENCE OF WHICH IS PRESENTLY NOT KNOWN OR SHOWN. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXISTENCE AND PRECISE LOCATION OF ALL FACILITIES AND TO AVOID DAMAGE. SEE THE JOB SPECIAL PROVISIONS FOR A LIST OF UTILITY COMPANIES ON OR WITHIN THE VICINITY OF THE PROJECT LIMITS.

ANY WORK ON THE PLANS THAT EXTENDS BEYOND THE PROJECT LIMITS IS CONSIDERED INCIDENTAL TO AND A PART OF THE CONSTRUCTION OF THIS PROJECT.

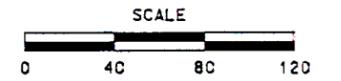
RIGHT OF WAY LIMITS FOR THIS PROJECT EXTEND FROM STATION 10+21.78 TO STATION 20+72.11, A DISTANCE OF 1.145 MILES. THIS INCLUDES ALL EASEMENTS.

COORDINATES BASED ON MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE.



BEGIN PROJECT STA. 10+21.78 N65°36'35" W, 31.20 FEET FROM THE SOUTHEAST CORNER OF BROADWAY TERRACE RECORDED IN PLAT BOOK 18, PAGE 56, A 1 1/2" IRON PIPE WITH CAP L.S. 1953, LOCATED ON THE WEST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 63 AT THE CENTERLINE OF GREEN VALLEY DRIVE EXTENDED IN THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI. PROJECT BEGINS AT A POINT 989.89' SOUTH AND 1437.33' WEST OF BM #3 DESCRIBED ON SHEET 6.

Location	Station	Centerline Reference	Offset (Feet)	Description
1	10+97	SB Rp	107 RT	Trail's Southwest Corner Point
2	10+89	SB Rp	107 RT	Trail's Centerline West Point
3	10+70	SB Rp	107 RT	Trail's Northwest Corner Point
4	9+62	SB Rp	0	Trail's Centerline under US Route 63 SB Ramp Bridge
5	9+53	NB Rp	0	Trail's Centerline under US Route 63 NB Ramp Bridge
6	9+55	NB Rp	123 RT	Trail's Southeast Corner Point
7	9+98	NB Rp	123 RT	Trail's Centerline East Point
8	10+20	NB Rp	123 RT	Trail's Northeast Corner Point



CITY of COLUMBIA
NON-MOTORIZED TRANSPORTATION IMPROVEMENTS
HOMINY TRAIL WEST
STA. 10+00.00 TO STA. 21+00.00

PROJ. NO.: _____ DATE: _____ SCALE: 1"=40'
DESIGNED BY: JCA CHECKED BY: JCA
STP-2101 (S&P) WEST

Sheet 1 of 1018 PLAN SHEET

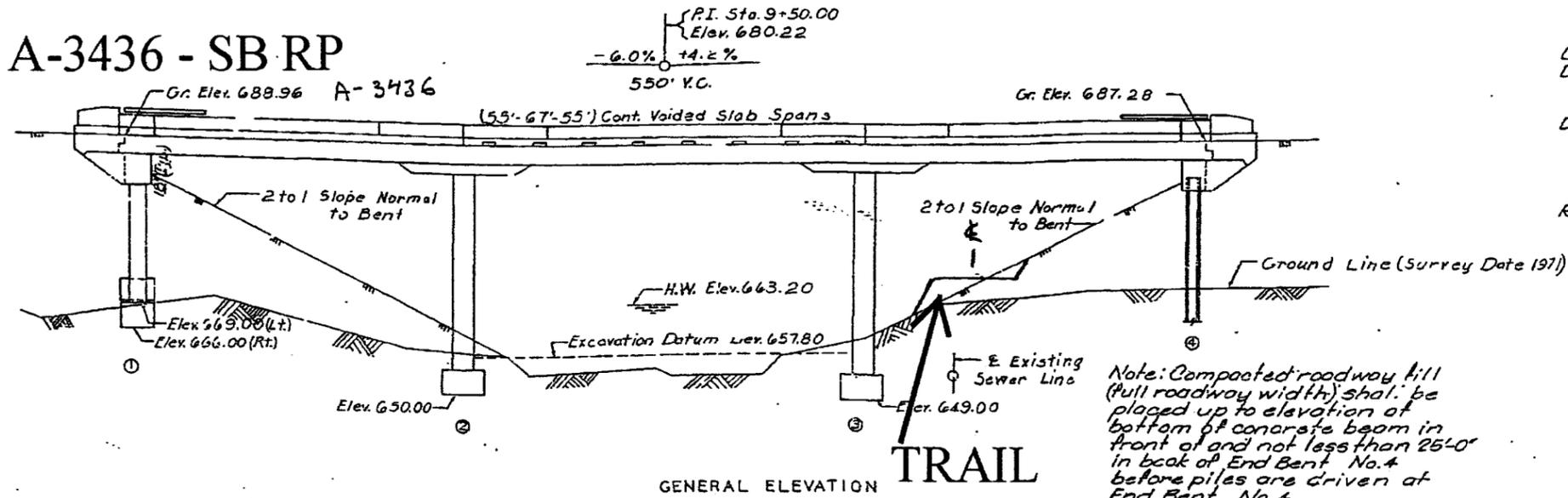
FILES: _____ TIMES: _____ DATES: _____

EXHIBIT B1 - US ROUTE 63 SOUTHBOUND - HOMINY TRAIL WEST

MISSOURI STATE HIGHWAY DEPARTMENT

FED. ROAD DIST. NO.	STATE	FED. AID PROJ. NO.	FISCAL YEAR	SHEET NO.	TOTAL SHEETS
3	MO.		13	34	

BR A-3436 - SB RP



Design Specifications: A.A.S.H.T.O.-1073
 Design Loading:
 HS20-44 No Future Wearing Surface
 Earth 120# Equivalent Fluid Pressure 30#
 Design Unit Stresses:
 Class B1 Concrete $f_c = 1,600$ psi
 Reinforcing Steel $f_s = 20,000$ psi
 Steel Pile $f_b = 9,000$ psi
 Reinforcing Steel
 Minimum clearance to reinforcing steel shall be $1\frac{1}{2}$ " unless otherwise shown.

Note: Compacted roadway fill (full roadway width) shall be placed up to elevation of bottom of concrete beam in front of and not less than 25'-0" in back of End Bent No. 4 before piles are driven at End Bent No. 4.

BR A-6579 - SB

(62' - 70' - 62') Prestressed Conc. I - Girder Spans

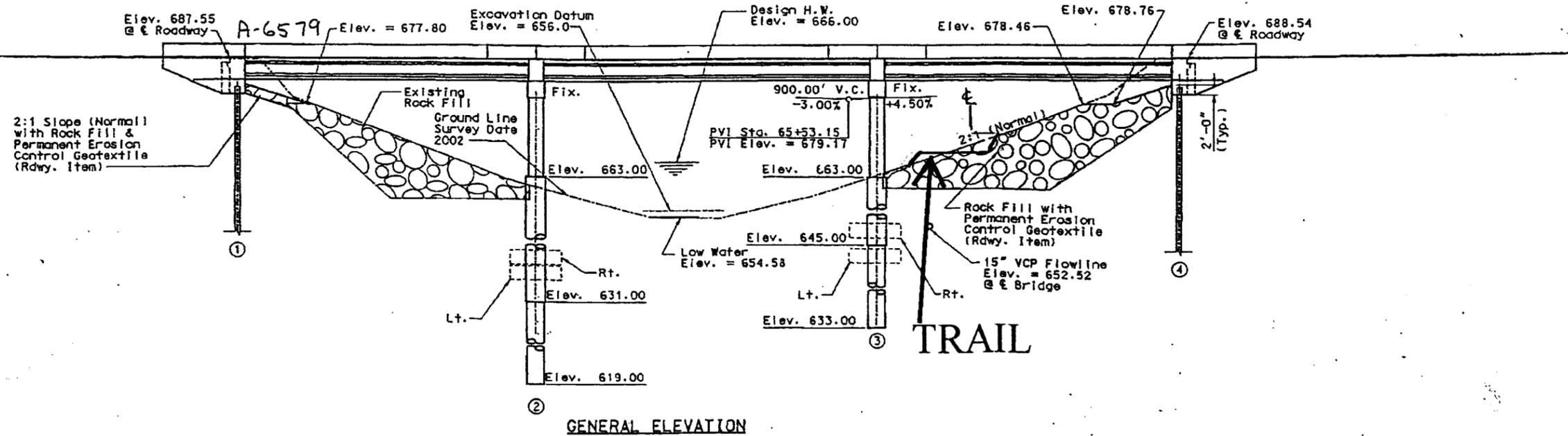
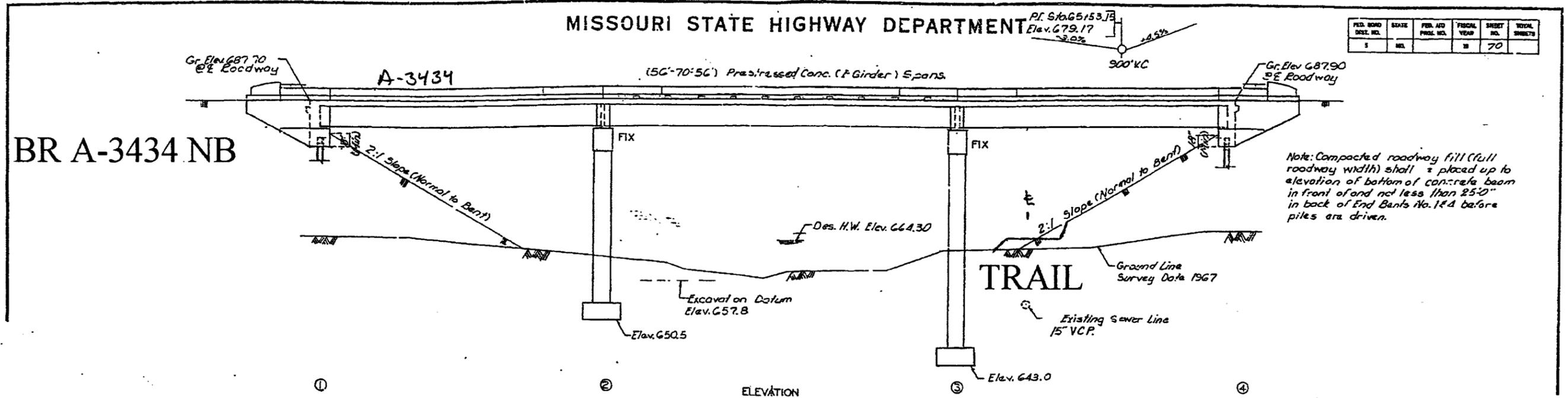
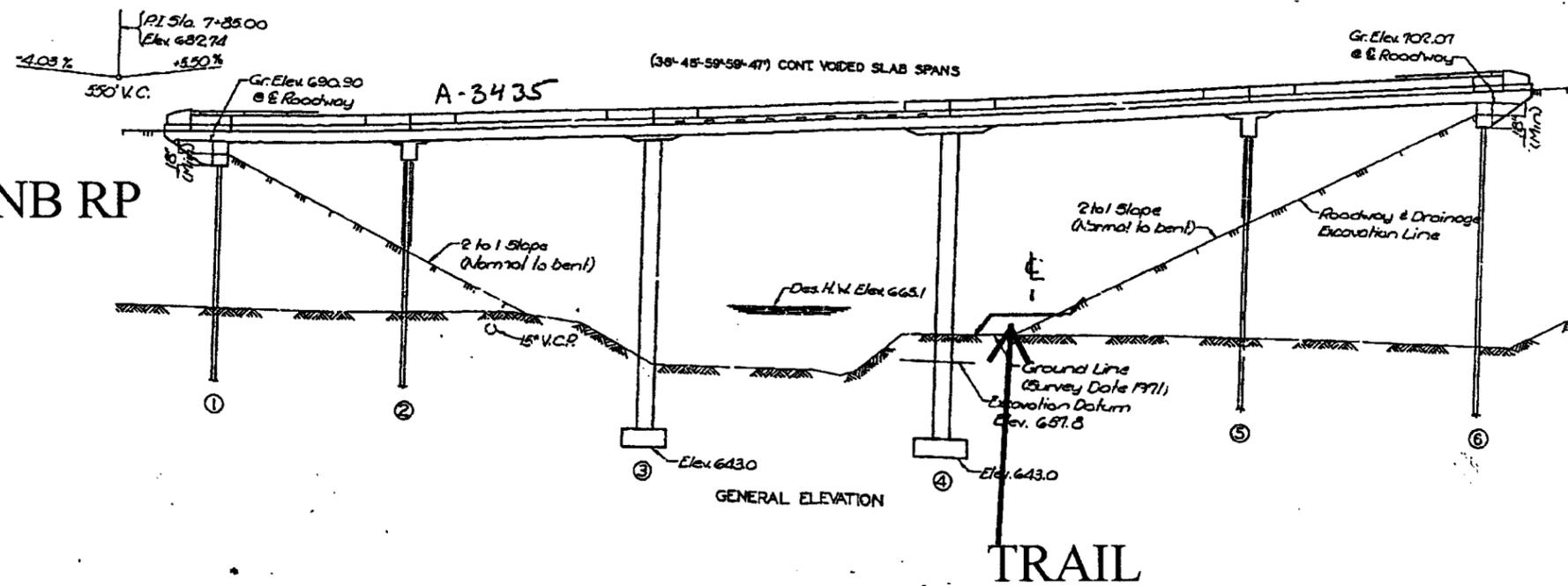


EXHIBIT B2 - US ROUTE 63 NORTHBOUND - HOMINY TRAIL WEST



BR A-3434 NB



BR A-3435 NB RP

EXHIBIT C - US ROUTE 63 - HOMINY TRAIL WEST



CURVE HOMINY-1		CURVE HOMINY-2		CURVE HOMINY-3		CURVE HOMINY-4	
PI	10+82.63	PI	11+56.52	PI	12+85.79	PI	16+99.21
PC	10+21.78	PRC	11+10.12	PCC	11+94.22	PC	16+47.21
PRC	11+10.12	PCC	11+94.22	PT	13+76.33	PT	17+50.20
Δ	101° 13' 55.0" (LT)	Δ	60° 13' 34.4" (RT)	Δ	14° 54' 22.8" (RT)	Δ	19° 40' 10.7" (LT)
D	114° 35' 29.6"	D	71° 37' 11.0"	D	8° 11' 06.4"	D	19° 05' 54.9"
L	88.34'	L	84.05'	L	182.12'	L	102.99'
T	60.91'	T	46.40'	T	91.57'	T	52.01'
R	50.00'	R	80.00'	R	700.00'	R	300.00'

T48N - R12W

UNDER GROUND FACILITIES, STRUCTURES AND UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE SURVEY AND RECORDS. THE ENGINEER DOES NOT WARRANT THE LOCATIONS OF THESE FACILITIES AS PRECISE. IT IS POSSIBLE THERE MAY BE OTHERS. THE EXISTENCE OF WHICH IS PRESENTLY NOT KNOWN OR SHOWN. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE EXISTENCE AND PRECISE LOCATION OF ALL FACILITIES AND TO AVOID DAMAGE. SEE THE JOB SPECIAL PROVISIONS FOR A LIST OF UTILITY COMPANIES ON OR WITHIN THE VICINITY OF THE PROJECT LIMITS.

ANY WORK ON THE PLANS THAT EXTENDS BEYOND THE PROJECT LIMITS IS CONSIDERED INCIDENTAL TO AND A PART OF THE CONSTRUCTION OF THIS PROJECT.

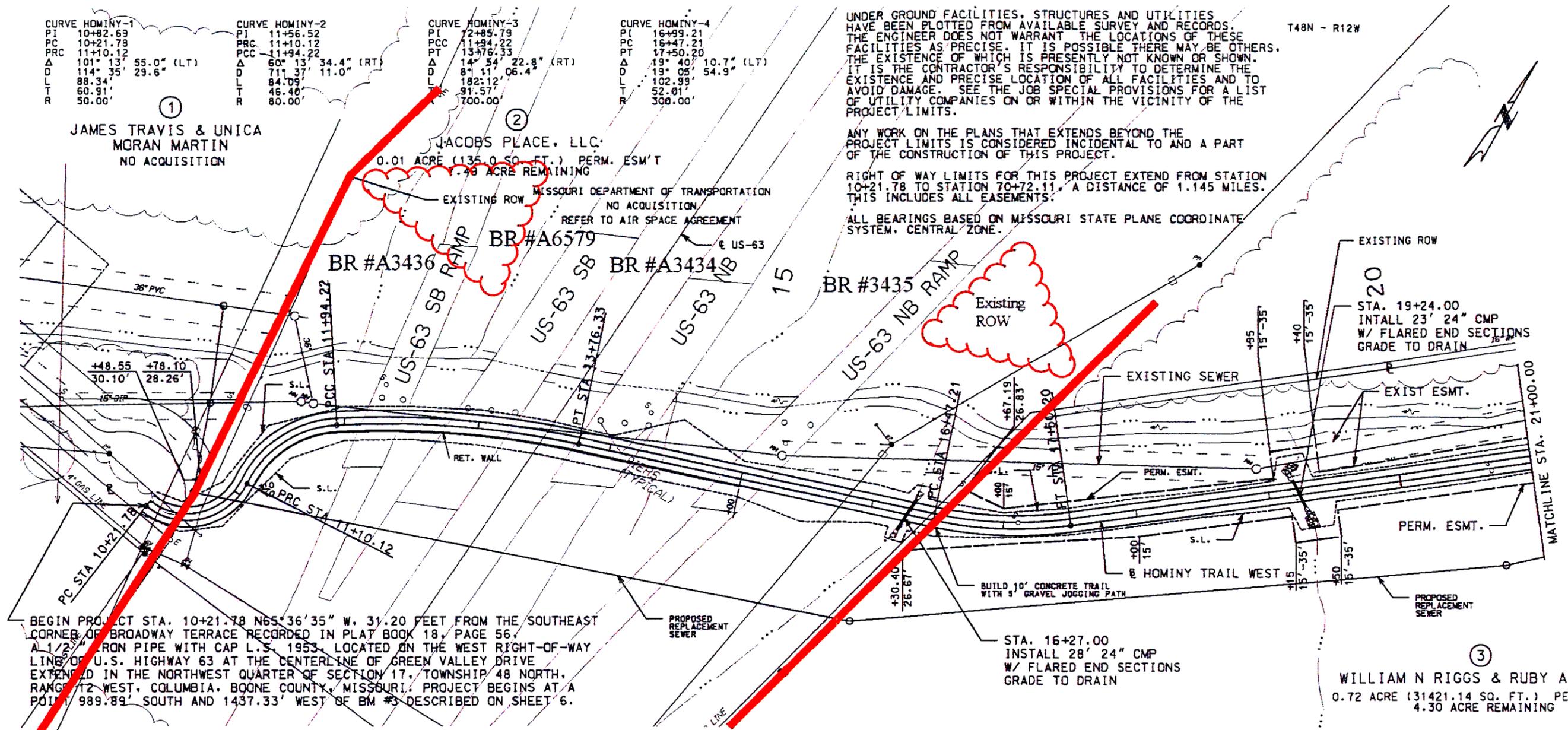
RIGHT OF WAY LIMITS FOR THIS PROJECT EXTEND FROM STATION 10+21.78 TO STATION 21+00.00, A DISTANCE OF 1.145 MILES. THIS INCLUDES ALL EASEMENTS.

ALL BEARINGS BASED ON MISSOURI STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE.

①
JAMES TRAVIS & UNICA MORAN MARTIN
NO ACQUISITION

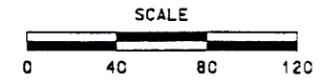
②
JACOBS PLACE, LLC.
0.01 ACRE (135.0 SQ. FT.) PERM. ESM'T
4.98 ACRE REMAINING

③
WILLIAM N RIGGS & RUBY A RIGGS
0.72 ACRE (31421.14 SQ. FT.) PERM. ESM'T
4.30 ACRE REMAINING



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STA. 16+27.00
INSTALL 28' 24" CMP
W/ FLARED END SECTIONS
GRADE TO DRAIN



NON-MOTORIZED TRANSPORTATION IMPROVEMENTS		
HOMINY TRAIL WEST		
STA. 10+00.00 TO STA. 21+00.00		
PROJ. NO.:	DATE:	SCALE: 1"=40'
FED'L. PROJ. #:	DESIGNED BY:	CHECKED BY:
STP-2101 (SQ) WEST	JCA	JLH
PLAN SHEET		
Sheet 4 of 1018	FILES	DATE

Source:
Mike Hood 

FISCAL and VISION NOTES:

Agenda Item No. _____

TO: City Council
FROM: City Manager and Staff 
DATE: May 16, 2011
RE: Trail Connector License Agreement with MoDOT for the Route WW and US Route 63 Hominy Creek Bridge Underpasses.

City Fiscal Impact Enter all that apply:	
\$0	City's current net FY cost.
\$1,820,000	Amount of Funds Already appropriated
\$0	Amount of budget amendment needed
\$3,176,000	Estimated 2 yr net costs:
\$0	One-time
	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:	
N	Federal or state mandated? (Y/N)
Vision Implementation Impact Enter Below All That Applies: Refer to Website:	
Y	Vision Impact? (Y/N or if N, go no further)
12.4	Primary Vision, Strategy and/or Goal Item#
12.4.1 12.4.2	Secondary Vision, Strategy and/or Goal Item#
Task #	FY10/FY11 Implementation Task#

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration an Ordinance authorizing the City Manager to execute the Missouri Highways and Transportation Commission Trail Connector License Agreement for the Hominy Trail Connections under Route WW and US Route 63 as part of the Hominy Trail West from US-63 to Lansing Avenue.

DISCUSSION:

The Missouri Highways and Transportation Commission requires that a Trail Connector License agreement be initiated where the Hominy Trail goes under the Route WW and US Route 63 Hominy Creek Bridges. The Hominy Trail project was approved by the Council for implementation. This project is in the Right-of-Way acquisition phase and the Trail Connector License Agreement is part of acquisition.

FISCAL IMPACT:

None

VISION IMPACT:

This action supports vision goal 12.4 which calls for an extensive, safe network of trails that accommodate a variety of uses ranging from recreation to non-motorized transportation.

SUGGESTED COUNCIL ACTIONS:

Approval of the Ordinance authorizing the City to enter into the Missouri Highways and Transportation Commission Trail License Agreement for the Hominy Trail as it goes under the Route WW and US Route 63 Hominy Creek Bridges.