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DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Break in Limited Access License

DATE OF DOCUMENT: _____

GRANTOR(S): Missouri Highways and Transportation Commission
MAILING ADDRESS: P.O. Box 270
105 West Capitol
Jefferson City, MO 65102

GRANTEE(S): City of Lee's Summit
MAILING ADDRESS: 220 SE Green Street
Lee's Summit, Missouri 64063

REFERENCE BOOK AND
PAGE: _____

CCO Form: TR51
Approved: 11/11 (BDG)
Revised: 01/16 (BDG)
Modified:

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
BREAK IN LIMITED ACCESS LICENSE**

THIS LICENSE is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), whose address is P.O. Box 270, Jefferson City, Missouri 65102, and City of Lee's Summit (hereinafter, "City"), whose address is 220 SE Green Street, Lee's Summit, Missouri 64063.

WITNESSETH:

WHEREAS, the City claims to own and have exclusive right to possession, use, and control of certain real estate in Lee's Summit, in Jackson County; and

WHEREAS, by a deed recorded electronically in Instrument Number 2016E0097483, in the Office of the Jackson County Recorder of Deeds, all right of access between said state highway and the City's abutting land in Lee's Summit was restricted to a certain location (or locations) therein set out; and

WHEREAS, the City now requests and the Commission is willing to allow the City access to Route 291 as hereinafter set out.

NOW, THEREFORE, in consideration of the payment of zero dollars (\$0.00) made payable to the Director of Revenue-Credit State Road Fund by the City to the Commission, and the promises, covenants, and representations contained herein, the parties agree as follows:

(1) **BREAK IN ACCESS**: It is agreed and the Commission hereby grants to the City, the right of access pursuant to the terms and conditions of this license. All abutter's rights of direct access between the highway now known as Route 291 and City's abutting land in part of Section 32, Township 48 North, Range 31 West, in Jackson County is owned by the Commission except that the City shall have the usual right of direct access to the nearest lane of the thruway over a 30 foot entrance centered on the Commission's West property line at Station 52+42.80. This grant of access is personal to the City and shall be in effect only so long as all of the parcel of property owned by the City adjacent to the break in access as of the date of the execution of this License is owned, maintained and operated by the City for municipal government purposes. The break in access granted pursuant to this License shall immediately lapse and shall revert to the Commission without any further action required of the Commission if the City conveys, leases, delegates operation, or no longer directly controls all of the City -owned parcel adjacent to the break in access

measured as of the date of the execution of this License. If the break in access granted to the City pursuant to this License lapses for any reason whatsoever, including, but not limited to cancellation of the License pursuant to (16), below, the City shall not be entitled to any compensation from the Commission due to the loss in access and the City hereby waives any such claim for damages, including, but not limited to inverse condemnation claims.

(2) GEOMETRIC IMPROVEMENTS: The City shall construct or cause to be constructed geometric improvements along Route 291. The improvements shall include but are not limited to, widening Route 291 along West to provide for Right turn lane. The construction of geometric improvements shall be in accordance with plans submitted to the Commission's District Engineer. The City shall submit plans to the Commission's District Engineer within three (3) months of the execution of this Agreement.

(3) TERMINATION AND REVERSION: All geometric improvements required to be constructed pursuant to this License must be completed within one year of issuing the permit. If the City fails to construct the geometric improvements within the time allowed, the Commission may terminate this License and the break in access granted pursuant to this License will be voidable at the Commission's option. If the Commission determines to terminate the License, the Commission will provide written notice of the termination to the City. If the Commission terminates this License, the break in access granted pursuant to this License shall lapse and the entrance shall immediately revert to the Commission. Further, the reversion will be without any compensation or damages paid to the City for the loss of the break in access. Upon reversion, the Commission may obstruct or otherwise eliminate the access.

(4) COSTS: All costs associated with the construction of the proposed geometric improvements shall be borne entirely by the City, with no cost incurred by the Commission.

(5) PLANS: The City shall have detailed plans prepared at their cost, which are to be submitted to the Commission's District Engineer for the Commission's review and approval.

(6) RELOCATION: The City shall secure the removal, relocation or adjustment of any public or private utilities located on private easements or public right-of way, if the construction of the herein contemplated geometric improvements so required, without cost to the Commission.

(7) INSPECTION: The City will allow inspection of the construction of the herein contemplated geometric improvements by the Commission's District Engineer, or his authorized representative, at any time and shall take no attempts to prevent said inspection. Within ninety (90) days following notice by the City to the Commission that construction is complete, the Commission will inspect the work to determine that it is acceptable.

(8) 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 License.

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

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

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

(C) In no event shall the language of this License 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.

(9) COMMISSION PROPERTY: All improvements made within the state-owned property shall become the Commission's property, and all future alterations, modifications, or maintenance thereof, will be the responsibility of the Commission.

(10) PERMITS: Before beginning work, the City shall secure from the Commission's District Engineer a permit for the proposed improvement. Issuance of the permit is within the sole discretion of the Commission's district engineer.

(11) BOND: The City shall secure sufficient bond, as determined by the Commission's District Engineer or its authorized representative, for the construction of the proposed improvement on Commission right-of-way.

(12) CONSTRUCTION OF IMPROVEMENTS: All construction of the proposed geometric improvements shall be according to the latest editions of the Missouri Highways and Transportation Commission's *Standard Specifications for Highway Construction*, Standard Plans for Highway Construction, and the Missouri Department of Transportation's *Approved Products List for Traffic Signals and Highway Lighting*.

(13) AMENDMENTS: Any change in this License, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the City and the Commission.

(14) ASSIGNMENT: This break in access License is not assignable and the City shall not assign, transfer or delegate any interest in this License.

(15) AUDIT OF RECORDS: The City must maintain all records relating to this License, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this License and any extension thereof, and for three (3) years from the date of final payment made under this License.

(16) CANCELLATION: The Commission may cancel this License at any time and for any reason whatsoever, including, without limitation for breach of the terms of this License by City or for the convenience of the Commission, by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the License for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(17) LAW OF MISSOURI TO GOVERN: This License 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 License.

(18) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this License, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(19) SECTION HEADINGS: All section headings contained in this License are for the convenience of reference only and are not intended to define or limit the scope of any provision of this License.

(20) SOLE BENEFICIARY: This License is made for the sole benefit of the parties hereto and nothing in this License shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(21) AUTHORITY TO EXECUTE: The signers of this License 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 License.

(22) ENTIRE AGREEMENT: This License represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(23) SUCCESSORS: The provisions of this License shall apply to and be binding upon the parties executing this License, their successors, agents, affiliates, and lessees, including officers, employees, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

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

Executed by the City this ____ day of January, 2017.

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

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

City of Lee's Summit

By _____

Printed: _____

Printed: _____

Title _____

Title _____

ATTEST:

ATTEST:

By _____

Printed: _____

Printed: _____

Secretary to the Commission

Title: _____

Approved as to Form:

Approved as to Form:

Printed: _____

Printed: _____

Commission Counsel

Title _____

ACKNOWLEDGMENT BY CITY

STATE OF MISSOURI)

) ss

COUNTY OF JACKSON)

On this ____ day of January, 2017, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the City of Lee's Summit and that the foregoing instrument was signed and sealed on behalf of the City of Lee's Summit and that he/she acknowledged said instrument to be the free act and deed of the City of Lee's Summit and that it was executed for the consideration stated therein and no other.

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

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT BY COMMISSION

STATE OF MISSOURI

COUNTY OF COLE

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

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

Notary Public

My Commission Expires: _____