

Bill No. 5173

Ordinance No \_\_\_\_\_

Requested by: Ryan Graham

Sponsored by: Council as a Whole

AN ORDINANCE AUTHORIZING EXECUTION OF A TRAIL LICENSE AGREEMENT AND INGRESS, EGRESS, BETWEEN ST. CHARLES COUNTY AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES TO ALLOW THE ST. CHARLES COUNTY PARKS AND RECREATION DEPARTMENT TO ROCK A SECTION OF TRAIL THAT SEPERATES MISSOURI BLUFFS PARK FROM THE KATY TRAIL STATE PARK FOR THE CONSIDERATION OF \$10

WHEREAS, in 2020 St. Charles County acquired approximately 296 acres of property which is now known as Missouri Bluffs Park; and

WHEREAS, the new section of trail will be approximately 200 square feet; and

WHEREAS, a strip of land 10 feet in width will extend from Missouri Bluffs Park to KATY trail; and

WHEREAS, the trail will allow improved access to Missouri Bluffs Park; and

WHEREAS, the trail will connect the park and its new parking area to the KATY trail; and

WHEREAS, the Trail License Agreement and Ingress, Egress and new rock section of trail will allow the St. Charles County Parks Department to develop improved access to

the proposed trail area by allowing the Missouri Department of Natural Resources to connect the new parking area to the KATY trail; and

WHEREAS, the trail will accommodate the foot and bicycle traffic that runs through the park; and

WHEREAS, the St. Charles County Parks Department will improve access for public use and enjoyment; and

WHEREAS, the improved trail will allow more residents to move safely through the park; and

WHEREAS, the improvements shall include the non-exclusive right to use the premises to construct, maintain, relocate, reconstruct and remove trails as it deems necessary, including for pedestrian and bicycle related recreational purposes as set forth in the agreements attached hereto and incorporated herein, at County's cost; and

WHEREAS, pursuant to Section 2.507 of the St. Charles County Charter and the recommendation of the County Executive, the County Parks Department shall be responsible for the development, operation and maintenance of a system of County parks and open spaces and to operate recreational programs compatible with this system of parks.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The County Executive is hereby authorized to execute the Trail License Agreement attached hereto as **EXHIBIT A**.

Section 2. This ordinance shall be in full force and effect from and after the date of its passage and approval.

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DATE PASSED

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DATE APPROVED BY COUNTY EXECUTIVE

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CHAIR OF THE COUNCIL

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COUNTY EXECUTIVE

ATTEST:

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COUNTY REGISTRAR

**STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES  
TRAIL ACCESS LICENSE**

**THIS LICENSE AGREEMENT, NO. STC2301** (Agreement), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the **MISSOURI DEPARTMENT OF NATURAL RESOURCES** (Licensor), and **ST. CHARLES COUNTY** (Licensee).

**WHEREAS**, Licensor is responsible for the management of Missouri’s state parks and historic sites pursuant to authority granted by § 640.010.3 and § 253.040, RSMo; and

**WHEREAS**, Licensor owns and manages the Katy Trail State Park (Trail) as a public recreational trail in accordance with the terms of an Interim Trail Use Agreement between Licensor and the Missouri-Kansas-Texas Railroad Company signed on June 25, 1987, consistent with the National Trails System Act 16 USC 1247(d) and 49 CFR pt. 1152; and

**WHEREAS**, Licensor’s ownership and management of the Trail is subject to the terms of that Interim Trail Use Agreement and the requirements of the decision and Certificate of Interim Trail Use issued by the Interstate Commerce Commission in Docket Number AB-102 (Sub-No. 13) on April 27, 1987; and

**WHEREAS**, Licensee is a County within the State of Missouri organized October 1, 1812; and

**WHEREAS**, Licensee desires to connect their Missouri Bluffs County Park via a trail to Licensor’s Katy Trail State Park and memorialize this connection (Exhibit A), and

**NOW THEREFORE**, in consideration of \$10, the covenants hereafter set forth, and other good and valuable consideration the receipt of which is hereby acknowledged and agreed by the parties to be adequate, the parties agree as follows:

**ARTICLE I**

**1. Consideration and Description** In consideration of \$10, mutual public recreational benefit and the covenants contained herein Licensor grants this License to Licensee to construct, use, maintain, repair, and develop pedestrian ingress and egress to Licensee’s adjacent property and connecting Licensee’s property to Licensor’s right-of-way (ROW) along the former Missouri-Kansas-Texas Railroad presently utilized as a linear state park known as the Katy Trail State Park, as shown on Exhibit A, attached. For convenience, said pedestrian access is called “Access,” and Katy Trail State Park is called “Trail.” The location of Access is described as:

A strip of land 10 feet in width extending from Licensor’s Trail to Licensee’s property, all shown on Exhibit A, located near MP 51.28, GPS Coordinates

38.6902917°, -90.6660111°, near Weldon Springs, County of St. Charles, State of Missouri, within Section 2, Township 45N, Range 3E.

**2. Access:** Licensee shall submit to Licensor three days advance written notice before performing any work on Licensor's property, with the exception of emergencies, at which time they will follow procedures set forth in Article III, Paragraph 1.

a.) Licensee shall post industry standard construction warning signs at the construction site, and at the exits from the Trailheads nearest the West and East approaches to the construction site. Licensee shall cause as minimal interference with the operation of Licensor's Trail. At no time is Licensor's Trail to be blocked from travel by Trail users.

b.) Licensee shall notify Licensor the date that Crossing is being worked on. Upon completion of repairs Licensee shall promptly remove from Licensor's property all tools, equipment, and materials placed by Licensee. Licensee shall restore property to state and condition as when Licensee entered, and shall leave property in a clean and presentable condition.

## **ARTICLE II**

### **Licensee undertakes and agrees:**

1. Licensee shall assume the risk of, protect, indemnify and hold harmless Licensor, its officers, agents, and employees from and against all liability for or on account of claims, demands or suits involving injury or death of any and all persons or damage to property or livestock, resulting from or incident to the construction, maintenance, reconstruction, and use of Crossing caused by Licensee, its members, guests, and invitees. Licensee agrees to immediately investigate any claims, demands or suits and shall defend, settle, and/or otherwise dispose at its sole cost and expense. In the event Licensee settles any claims, demands, or suits, it shall obtain a release which includes all claims against Licensor. Licensee shall not have or make against Licensor any claim or demand for or on account of any damage Licensee may suffer or sustain because of any failure of Licensor's title to the ROW and lands occupied by Crossing.

2. To perform the above-described Crossing construction work at its sole cost and expense. Said work shall conform with all laws relating to construction on public land including, without limitation, prompt pay laws, local ordinances, and public safety standards, and shall be performed in accordance with plans and specifications prepared by Licensee's representatives and any future changes must be approved by Licensor. Any and all excavations shall be backfilled by Licensee in a manner satisfactory to Licensor and in such a manner and at such times as shall not endanger or interfere with the safe operation of the Trail. The regulations of Licensor and the instructions of its representatives shall be complied with relating to the proper manner of protecting the Trail and property at said locations, as well as the persons and authorized vehicles occupying, moving on, or using the Trail.

3. To make appropriate arrangements with any person or legal entity occupying or using the premises affected hereby pursuant to a lease or other permission granted by Licensor, so that Licensee's said Crossing will not unreasonably interfere with the use of the subject property, or create undue hardship on any person or legal entity occupying or using the premises or otherwise be in conflict with any of the provisions of Licensor's agreements under the National Trails System Act or the Certificate of Interim Trail Use (CITU).

4. This Agreement does not create any rights, claims, or causes of action between the parties to this Agreement in favor of any non-parties to the Agreement.

### **ARTICLE III**

**1. Repairs: (a)** In its use of Crossing, Licensee shall at all times maintain the Crossing in a safe and secure manner, in a condition satisfactory to Licensor, and in a manner that will protect and will not interfere with the Trail or its users. Licensor may request Licensee to make reasonable repairs of damage to Crossing caused by Licensee, its users, guests or invitees, as in the judgment of Licensor shall be necessary to avoid interference with or danger in the use or operation of Licensor's Trail and property; its present or future appurtenances; or facilities or operations of other persons occupying or using the Trail with Licensor's permission. Licensee shall not be responsible for repair of damage to Crossing, which is not caused by Licensee, its users, guests or invitees. Licensor shall provide written notice to Licensee designating non-compliance and, upon receipt of written notice, Licensee shall make any repairs as soon as reasonably practical, but in no event later than 30 days from receipt of notice for repairs that do not pose a public safety hazard, and within 10 days from receipt of notice in the event a condition exists that may threaten public safety.

**(b)** If Licensee shall fail to perform any of its obligations contained herein, including failure to make necessary repairs as outlined in Paragraph 1 (a) of Article III, Licensor may cause condition to make safe or made to comply as required, or cause repairs to be made. Licensor, acting as the agent of Licensee, may perform work as is necessary in the judgment of Licensor. Licensee shall, on demand, promptly reimburse Licensor the whole cost, plus 10% as a charge for supervision, accounting, use of tools and equipment; or Licensor may terminate this License by giving to Licensee not less than 10 days advance written notice of its intention to do so.

**2. Termination:** Notwithstanding Paragraph 1(b), Licensor may terminate this Agreement if Licensee fails to comply with Licensee's covenants and obligations. Licensor may also terminate this Agreement if Trail is required for railroad purposes pursuant to the National Trail Systems Act. No reimbursement shall be made for Licensee's expenses incurred in the removal of the Crossing or the consideration paid for this Agreement. No termination or expiration shall affect the rights and liabilities, if any, of the existing parties.

**3. Restoration:** Upon the termination of this Agreement, Licensee shall remove its Crossing and restore Trail ROW to its condition prior to the construction of Licensee's Crossing, and in a manner satisfactory to Licensor. If Licensee fails to remove its Crossing within 90 days following termination of this Agreement, Licensor may remove and charge the expense there from to Licensee on the basis provided in Paragraph 1(b) of Article III.

**4. Assignability:** This Agreement, and all the provisions contained, shall be binding upon the parties and Licensee agrees to supply notice in writing to Licensor of any name changes. Licensee agrees not to assign this Agreement or any interest including but not limited to concessionaires, without prior consent of Licensor in writing, and Licensor shall not unreasonably withhold consent. Licensor retains the right to cancel and terminate this Agreement if Licensee or its assignee uses this Crossing for any purpose other than stated in Article 1, Paragraph 1.

**5. Miscellaneous: (a)** The personal pronouns used as referring to Licensee shall be understood to refer to Licensee whether Licensee is a natural person, a partnership, a corporation, a political subdivision, or any combination.

**(b)** Any notice required to be given by Licensor to Licensee, or Licensee to Licensor shall be properly given when served upon or hand delivered to, or upon receipt if mailed, postage paid, certified mail, return receipt requested, addressed as follows:

**If to Licensor:**

Real Estate Section  
DNR/Division of State Parks  
P.O. Box 176  
Jefferson City, MO 65102  
(573) 526-4786 (Office)  
(573) 526-4395 (FAX)

**If to Licensee:**

St. Charles County  
Parks and Recreation Department  
100 North Third Street #318  
St. Charles, MO 63301  
(636) 949-7520 (Office)  
(636) 949-7521 (FAX)

**With copies to:**

Katy Trail State Park Coordinator  
Rock Bridge Memorial State Park  
5901 South Highway 163  
Columbia, MO 65203  
Office: (573) 449-7402  
FAX: (573) 442-2249

Notices of either party to the other shall be deemed delivered on the date actually received.

**(c)** No oral promises, oral agreements, or oral warranties shall be a part of this Agreement, nor shall any alteration, amendment, supplement, or waiver of any of the

provisions of this Agreement be binding upon either party unless supplemented, altered, changed, or amended by an instrument in writing, signed by Licensor and Licensee.

(d) This Agreement does not create any rights, claims, or causes of action between the parties to this Agreement in favor of any non-parties to this Agreement.

(e) This Agreement does not become binding upon Licensor until executed by Licensor's Director, Division of State Parks.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first written below.

**LICENSOR**  
**STATE OF MISSOURI**  
**DEPARTMENT OF NATURAL**  
**RESOURCES**

**LICENSEE**  
**ST. CHARLES COUNTY,**  
**MISSOURI**

\_\_\_\_\_  
**DAVID KELLY, DIRECTOR**  
**DIVISION OF STATE PARKS**

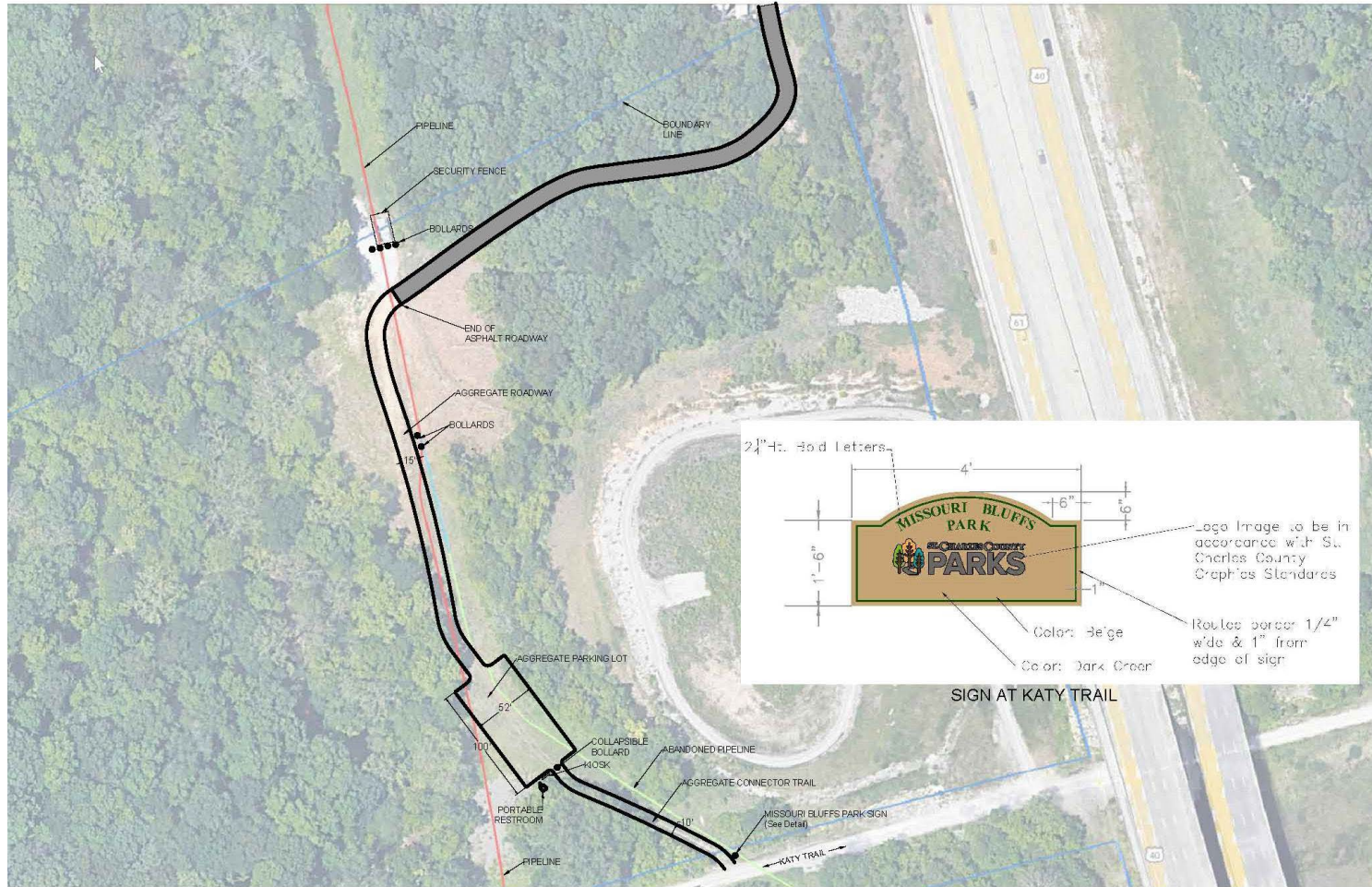
\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**



**Exhibit A**



**NOTE:**  
 Aggregate:  
 6" of 2" minus base compacted material  
 4" of 1" minus compacted material

**EXHIBIT A**