AN ORDINANCE AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE AN INTERGOVERNMENTAL SKYWALK LICENSE AGREEMENT WITH THE CITY OF ST. CHARLES

WHEREAS, St. Charles County owns and operates its County Detention Center and County Courthouse on each side of the 300 block of North Second Street; and

WHEREAS, the County proposes to construct a skywalk over the right of way of the 300 block of North Second Street in order to transport prisoners and provide limited access by authorized personnel between the County Jail and the County Courthouse; and

WHEREAS, the City is in agreement that the County may construct a skywalk over the 300 block of North Second Street for the purposes set out above, and will license the County to cross North Second Street to construct, maintain and use the skywalk, subject to the terms and conditions of said Skywalk License Agreement; and

WHEREAS, the City and County have come to an agreement and the terms of said Skywalk License Agreement are set forth in said Skywalk License Agreement attached hereto and incorporated herein as EXHIBIT A; and
WHEREAS, execution of the Skywalk License Agreement will benefit the residents of St. Charles County and increase the safety of Sheriff’s Department personnel transporting prisoners to the courthouse and will serve a public purpose; and

WHEREAS, Section 70.220 RSMo. authorizes an intergovernmental agreement between political subdivisions for the purposes herein set out.

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

Section 1. The County Executive or his designee is hereby authorized to execute the Skywalk License Agreement.

Section 2. The Skywalk License Agreement shall be in substantially the same form and content as that attached hereto and incorporated herein as EXHIBIT A.

Section 3. Compliance with all the terms of the Skywalk License Agreement shall be the responsibility of the Director of Facilities Management.

Section 4. This ordinance shall be in full force and effect from and after the date of its passage and approval and such cooperative agreement shall be valid upon its lawful execution by the appropriate officials of each governmental entity entering into such agreement as
required by Chapter 70 of the Revised Statutes of the State of Missouri.

________________________________________
DATE PASSED

________________________________________
DATE APPROVED BY COUNTY EXECUTIVE

___________________________
CHAIR OF THE COUNCIL

___________________________
COUNTY EXECUTIVE

ATTEST:

___________________________
COUNTY REGISTRAR

Facilities Agrmt with City of St. Charles re Air Rights re Corrections Courthouse 8-20 F
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TY OF SAINT CHARLES, MISSOURI, SKYWALK LICENSE AGREEMENT

THIS AGREEMENT is entered into by the City of Saint Charles, Missouri, a constitutional home rule charter city (hereinafter, the “City”) and Saint Charles County, Missouri, (hereinafter, the “County”).

WITNESSETH:

WHEREAS, the City has right-of-way in the 300 block of North Second Street; and

WHEREAS, the County owns and operates its County Adult Detention Center and County Courthouse on each side of the 300 block of North Second Street; and

WHEREAS, County’s current vehicle transport exposes Court personnel to dangers from inmates, including deputies becoming innocent victims of retaliatory actions against inmates as well as constant extended exposure at a close level to inmates needing to be handcuffed and restrained in vehicles and the direct transport will minimize such danger; and

WHEREAS, the County proposes to construct a skywalk over the right of way limits of the 300 block of North Second Street, pursuant to the plans and specifications as referred to herein, in order to transport prisoners and provide limited access by authorized personnel between the County Jail and the County Courthouse; and

WHEREAS, the City agrees to allow the County to construct a skywalk over North Second Street for the purposes set out above, and will license the County to cross North Second Street to construct, maintain and use the skywalk, 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:

EXHIBIT A
(1) **DEFINITIONS:** In this Agreement, the listed terms are to be given the meanings provided in the subparagraphs below:

(A) **City:** This term means the City of Saint Charles, Missouri.

(B) **County:** This term means St. Charles County, Missouri.

(C) **Courthouse:** This term means the building located at 300 North Second Street in the City of Saint Charles, Missouri.

(D) **Adult Detention Center:** This term means the St. Charles County Jail located at 301 North Second Street in the City of Saint Charles, Missouri.

(E) **Skywalk:** This term means that structure constructed by the County, pursuant to plans and specifications reviewed and approved by the City, which is located within the right-of-way limits of the 300 block of North Second Street, elevated above the street pavement and sidewalk, and provides a walkway for access to the Jail and Courthouse.

(2) **LICENSE GRANTED:** The City hereby grants the County, its successors and assigns, a non-exclusive license to build and maintain the Skywalk across North Second Street at the location described on Exhibit "A", and use such additional space adjacent to the Skywalk as may be reasonably necessary for working room during the period that the Skywalk is under construction and for maintenance of the Skywalk thereafter.

(3) **CONSIDERATION FOR THIS LICENSE:** In consideration of the payment of the sum of Ten and 00/100 Dollars ($10.00), the receipt of which is hereby acknowledged, the City grants this license to the County for the use of the airspace within the area described in Exhibit A and as otherwise described in this Agreement.

(4) **WORK BY THE COUNTY:** The County shall construct the Skywalk over the City’s right-of-way limits of the 300 block of North Second Street pursuant to the plans and specifications referred to herein, to provide a safe and secure way for prisoners and pre-trial detainees to be transported to and from the Courthouse as well as for other authorized personnel to walk to and from the Adult Detention Center and Courthouse. The City hereby grants the County, its successors and assigns, a non-exclusive license to use such additional space adjacent to the Skywalk as may be reasonably necessary for working room during the period that the
Skywalk is under construction, and for maintenance of the Skywalk thereafter. It is the intent of the City that this Agreement and the license granted hereby shall constitute a right to non-exclusive occupancy and use of the Skywalk by the County for the transport of prisoners and pre-trial detainees to and from the Adult Detention Center and Courthouse as well as to permit other authorized personnel to walk to and from the Adult Detention Center and Courthouse. The Skywalk shall be used for the limited purposes as set forth herein. The County specifically acknowledges that the Skywalk shall not be used by the public and that the use of the Skywalk by the public is a material breach of this Agreement. The County understands that it and its Skywalk users shall use this Skywalk at their own risk.

(5) CITY OWNERSHIP: The City reserves the ownership and ultimate use of the property under which the Skywalk will be located and its adjacent right-of-way or property for utility and transportation purposes. It is expressly understood and agreed that the primary use and purpose of the City’s property under which the Skywalk will be located, which is the subject matter of this license, shall be and remain as City right-of-way or property for transportation and utility purposes only.

(6) PERMITS: The County’s Engineer will apply for, obtain, complete and/or provide the necessary permits related to the Skywalk construction work. This work shall comply with all City building codes and permit requirements.

(7) SKYWALK DESIGN: The County and its consulting engineers, shall prepare final plans and final specifications for the Skywalk to be constructed above City right-of-way or property by the County. The Skywalk shall be designed to meet the requirements of AASHTO and the Americans with Disabilities Act (the “ADA”), and City design and construction standards. The County shall submit to City's Director of Engineering (the "City Engineer"), the final plans and specifications for the Skywalk, for written approval of the City Engineer, before any construction can begin on the City right-of-way or property. The general design and location of the Skywalk is shown on Exhibits "B" and “C”, which are attached to this Agreement and incorporated herein by reference. The design of the Skywalk shall maintain ADA accessibility on the City sidewalks currently located within the right-of-way.
(8) **SKYWALK PLANS APPROVAL:** The City, shall either approve or disapprove the final plans and specifications for the Skywalk within thirty (30) days of their receipt from the County. If the plans and specifications are not approved, the City shall explain in writing what deficiencies exist that must be corrected before the City will approve those plans.

(9) **SKYWALK CONSTRUCTION:** After written approval is obtained from the City and upon proper application by the County, the City shall issue, through its City Engineer or his authorized representatives, any permits necessary for the County to perform the work contemplated herein. The Skywalk shall be constructed in accordance with the approved plans and specifications to the satisfaction of the City Engineer or his authorized representatives.

(10) **PLAN SHEET:** The plan sheet showing the right-of-way and/or property lines and Skywalk area subject to this license is attached to this Agreement as Exhibit "A" and incorporated herein by reference.

(11) **CONSTRUCTION CONTRACTOR:** The City acknowledges that the County will enter into a construction contract with an approved contractor (the "Contractor") to construct the Skywalk in accordance with the approved construction plans and specifications. The County shall include the following provisions in the appropriate construction contract with the Contractor:

(A) **City Inspection:** The City's agents and employees will be authorized to inspect the work on the Skywalk on City right-of-way and/or property, and to approve or disapprove such work in the same manner as if the construction contract has been entered into between the Contractor and the City. The City agrees that all such inspections shall be conducted in a timely and reasonable manner.

(B) **City Inspection Before Final Acceptance:** The City shall make a post-construction inspection of the Skywalk, and if it deems necessary, require additional Skywalk finishing work for safety or durability, before the County may give its final acceptance of the Skywalk construction work to the Contractor.
(C) **Responsible Party for Payment:** The Contractor will look solely to the County for payments pursuant to the County’s construction contract, including, but not limited to, payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof. The County’s Contractor shall have no claim rights against the City, its elected and appointed officials, employees, agents, representatives, successors or assigns.

(D) **Construction Bonds:** the County shall acquire from the Contractor and shall deliver, prior to commencement of work on the Skywalk, 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, which shall be named as an obligee therein, as its interests may appear, of (1) performance of all contractual obligations, and (2) payment for all related labor, materials, and costs.

(12) **RESTORATION OF CITY PROPERTY:** At all times during and after the construction of the Skywalk, the County and its Contractor shall maintain the Skywalk in a manner that will not injure or damage the street pavement or sidewalk or any of the City property, except as specifically authorized herein. After construction of the Skywalk, the County shall restore the City right-of-way or property to its original condition or better, as determined by the City Engineer.

(13) **SKYWALK COST:** The County shall construct and maintain the Skywalk at its own cost and expense in accordance with the Final plans and final specifications approved by the City. If and when the City ever makes any changes or modifications to the right-of-way under, around or near the Skywalk, the County is fully responsible for the cost of any required modifications of the Skywalk.

(14) **DURATION OF LICENSE:** The City and the County agree that this license to design, construct, maintain, and use the Skywalk on City right-of-way or property shall exist indefinitely. This license shall terminate by operation of law if the County commits a material breach of this Agreement that is not promptly remedied and corrected by the County, and that breach is not excused or forgiven in writing by the City or its representatives.
(15) **NOT A JOINT VENTURE:** Nothing contained in this Agreement shall be deemed to constitute the City and the County as partners or joint ventures’, or as jointly liable, in the County’s design, construction, maintenance and operation of the Skywalk on City right-of-way or property for public use.

(16) **NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY:** The City 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 City’s use or ownership of the property, and the City’s representatives are not aware of the presence of any such hazardous or toxic substance or material, or petroleum product contamination, in the 300 block of North Second Street. The City makes no warranty or representation concerning the possibility of or absence of, concealed property contamination by such substances or materials, and the County assumes the risk of their presence, unknown and undetected. If the County discovers actual or potential hazardous or toxic substances or materials, or petroleum contamination on the subject property, the County is requested to notify the City’s representatives immediately.

(17) **HUMAN REMAINS, SACRED OBJECTS AND ARTIFACTS:** If human remains, or Native American or other sacred objects, artifacts or items of value are encountered during the design, construction, maintenance or use of the Skywalk, they will be handled in accordance with the Native American Graves Protection and Repatriation Act plus Sections 194.400 to 194.410, RSMo, as amended. There are no known human remains, sacred objects, artifacts or other items of value in the vicinity of the proposed Skywalk, to the best knowledge of City staff. However, if the County finds any human remains, sacred objects, artifacts, or other items of value on the City right-of-way or property, the County shall immediately cease work on or the use of the Skywalk, and notify the City’s representatives immediately.

(18) **ASSIGNMENT OF RIGHTS UPON DEFAULT, CITY OPTION:** If the County defaults on or abandons construction of the Skywalk, the County’s rights in this Agreement may
be assigned to the City at its option, and the City shall have the right, at its discretion, to complete construction of the Skywalk or demolish the structure. The City shall have the right to charge all City costs of the Skywalk construction or demolition to the County.

(19) **TRAFFIC CONTROL PLAN, SIGNING AND SCHEDULING OF CONSTRUCTION:** The County agrees to provide to the City Engineer a traffic control plan for handling traffic during the contemplated Skywalk construction. The County agrees to provide construction signing in compliance with the Manual on Uniform Traffic Control Devices. This Agreement is conditioned upon written City Engineer approval of the traffic control plan and any revisions or modifications to the plan before construction may begin. All construction shall be scheduled to avoid or minimize disruption of traffic flow on North Second Street and other City streets.

(20) **MAINTENANCE AND REPAIR:** At all times during the construction and after the completion of the Skywalk, the County shall maintain and repair at its own expense the Skywalk and all related Skywalk structures, so that these structures and the City's underlying and adjacent right-of-way or property will be kept safe and in good condition. The County’s maintenance of the Skywalk and its vicinity shall be accomplished so as to cause no unreasonable interference with the use of or access to North Second Street. However, the County is not obligated to maintain the street pavement on City right-of-way.

(21) **CITY ACTION IF THE COUNTY FAILS TO MAINTAIN THE SKYWALK:** If, after written notice, the County fails to meet its maintenance obligations to keep the Skywalk and adjacent City property clean, in good appearance and safe for use by the County and its authorized users, the City shall have the authority, but not a duty or obligation, to maintain or repair the Skywalk on City right-of-way or property and charge all such costs of maintenance and repair to the County. If the County fails to begin making repairs within seventy-two (72) hours after receiving written notice, or fails to continue with the repairs in a diligent manner to completion, the maintenance and repair work may be performed by the City. However, if the City Engineer or his/her authorized representative determines that an actual or potential emergency exists that requires immediate repairs, and then the City may make immediate repairs without prior written
notice, and charge those expenses to the County. Any Skywalk maintenance and repair expenses incurred by or on behalf of the City under this paragraph shall be, to the fullest extent permitted by law, the debt of, and shall be chargeable to and fully compensated by, the County. The County’s failure to maintain or repair the Skywalk promptly, after the City has given written notice of damaged or dangerous condition on or in the Skywalk, shall constitute a material breach of this Agreement by the County. Likewise, the County’s failure to promptly pay the City for their costs to maintain or repair the Skywalk when the County, after written notice, failed to make its own repairs promptly and completely, shall constitute a material breach of this Agreement by the County.

(22) REQUIRED INSPECTIONS OF STRUCTURE:

(A) After completion of the construction of the Skywalk, the County and its successors and assigns shall be required to have scheduled inspections of that structure by a registered engineer at least annually, to insure the safety of the Skywalk.

(B) The County shall be responsible for promptly submitting copies of all written annual or other Skywalk inspection reports to the City Engineer.

(23) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the County shall defend, indemnify and hold harmless the City, including its elected and appointed officials, employees, agents, representatives and successors and assigns 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 County's wrongful or negligent performance of its obligations under this Agreement.

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

(1) To obtain a no cost permit from the City Engineer prior to working
on the City’s right-of-way, which shall be signed by an authorized contractor representative (a permit from the City Engineer will not be required for work outside of the City’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 City, its elected and appointed officials and 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.

(24) NOTICE OF CLAIM OF POTENTIAL CITY LIABILITY: In the event the City receives notice of any claim against it related to or arising out of the negligent or insufficient design, construction, maintenance, use or inspection of the Skywalk, the City will promptly notify the County in writing, attaching a copy of such claim or summarizing its content and the name of the claimant, if not in writing. The County shall, through its own legal counsel, proceed to defend the City, its elected and appointed officials, employees and agents, from any such claim, and the City will fully cooperate with the County and its attorneys in the defense of the City, its elected and appointed officials, employees and agents. This County obligation to indemnify and defend shall not apply to or be deemed to include the intentional or negligent acts or omissions of the City, or its elected and appointed officials, employees and agents.

(25) LIABILITY INSURANCE: The County agrees to provide the City with an insurance certificate evidencing the County’s liability insurance as required by Paragraph 23(A) to protect and defend the City from liability for any claim arising out of the negligent or deficient
design, construction, maintenance, use or inspection of the Skywalk, which was not caused by or as a result of any negligent, reckless, or intentional act of the City. Such insurance protection of the City 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 City shall set reasonable limits for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the City to the County.

(A) Additional Named Insured: Each such insurance policy shall specify as the “insured” or “additional named insured” the City, its elected and appointed officials, employees and agents, who are collectively described in this provision as "the insured entities". At the County’s election, the insurance required by this provision may be included in one or more policies obtained by or on behalf of the County, naming another party or parties as insured also. However, if the County elects to insure more than the insured 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 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 County begins construction of the Skywalk on City right-of-way or property, for as long as that Skywalk remains open for use. Upon request, the County shall provide the City with a copy of a certificate of insurance, showing that such insurance is in effect. If any claim or suit is brought against the City or its elected and appointed officials, employees and agents, the City may require the County to provide a full and complete copy of all applicable policies of insurance, appropriately endorsed and the County shall promptly provide the policies and endorsements.

26) ASSUMPTION OF RISK: The County, by signing this Agreement, acknowledges that it has carefully read this legal document, and that it understands that the City right-of-way or
property has vehicular traffic and other potential hazards on it that cannot reasonably be protected against, or warned of, in advance. By signing this Agreement, the County acknowledges the existence of these and other risks on City right-of-way or property, and agrees to assume these risks by accepting this license, and by using the air space above the City’s right-of-way or property for the uses and activities authorized in this Agreement.

(27) LICENSE REVOCABLE – NO ASSIGNMENT: This license is revocable by the City if the County designs, constructs, maintains, uses or inspectors the Skywalk in a negligent, reckless, wrongful or unsafe manner, or refuses to follow contractor safety, or in any way breaches the terms of this Agreement. The County 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 County, and to no other person or entity.

(28) REVOCATION OF AGREEMENT: This license to construct, maintain, and use the Skywalk for the purposes set forth in this Agreement is granted in this Agreement at the pleasure or discretion of the City. The occurrence of any one or more of the following shall constitute a material breach of this Agreement, rendering the County in default and, at the discretion of the City or its representatives may result in the revocation of this license:

(A) Failure to Construct the Skywalk as Approved: The Skywalk is not completed in compliance with the plans and specifications approved or approved as modified by the City;

(B) Nonuse or Abandonment of the Skywalk: The Skywalk ceases to be used for the purposes stated herein, or is abandoned;

(C) Damage or Disrepair: The Skywalk is damaged or falls into disrepair, such that it becomes structurally unsound or unsafe to be used for the purpose for which it was built, and the County will not repair the Skywalk to a condition satisfactory to the City;

(D) Violation of This Agreement: The County violates any material term or
condition of this Agreement;

(E) **Change in Use**: The County changes or attempts to change the use, purpose or location of the Skywalk, without prior written approval of the City;

(F) **Violation of Laws**: The County constructs, operates, uses or maintains the Skywalk or any other structure on or within the City's property in violation of any state or federal laws or regulations applicable at that time, or in violation of this Agreement; but only after notice is given by the City specifying the violation and giving a reasonable opportunity to cure, not to exceed thirty (30) days, which violation is not cured by the County within the applicable time;

(G) **Failure to Pay Debts**: The County, its insurer, or any other agent or representative of the County fails to pay its debts or liabilities to the City under this Agreement;

(H) **Failure to Maintain Insurance**: The County fails to maintain insurance as required by this Agreement;

(I) **Void or Invalid Agreement**: This Agreement, or any material portion thereof, is deemed void or invalid by a court of competent jurisdiction.

(J) **Redesign, Relocation, or Alteration of Street**: In the event that the City should find that it is necessary to redesign, relocate, or alter North Second Street at this location, the City, at its sole discretion, may terminate this license. Further, should the City find that changes to the street or the Skywalk should be made at this location, but the City does not desire to terminate this agreement, the County shall bear the costs to relocate or modify the Skywalk to accommodate the City’s redesign.

(29) **RIGHT TO ENTER UPON THE SKYWALK**:

(A) **During Construction**: The City, and their officials, employees, agents and representatives shall have the right to enter upon, inspect and approve all work, materials and
equipment on or at the site of the Skywalk during its construction, at such time as the Contractor's employees or County employees may be present, without prior notice to or approval by the Contractor or the County.

(B) **During Maintenance, Repair or Reconstruction:** The City and its officials, employees, agents and representatives shall have the right to enter upon the Skywalk and to inspect and approve all work, materials and equipment there, during any maintenance, repair or reconstruction of the Skywalk, at such times as County employees or agents may be present, without prior notice to or approval of the County.

(C) **Inspections:** The City, and its officials, employees, agents and representatives shall have the right to make periodic inspections of the Skywalk when they deem such inspections necessary or advisable, at any time that the Skywalk is open for public use.

(D) **Emergency or Dangerous Condition:** In the event of an emergency, or when the City Engineer or City's other authorized representative(s) have determined that a condition may exist on or adjacent to the Skywalk which represents an actual or potential danger to the traveling public, the City, and their authorized agents and employees may immediately enter upon the Skywalk to inspect. The City may request the County to repair that condition; or where appropriate, the City may perform all repairs by itself or its contractors, and charge to and collect the costs of repair from the County.

(30) **ADVERTISING RESTRICTIONS:** No billboards or advertising is to be placed on or over the City's right-of-way, property or airspace, either within, on, attached to or apart from the Skywalk.

(31) **OPPORTUNITY TO CURE:** No material breach or default described in Paragraphs (21) or (28) shall be a basis for terminating or revoking this license or this Agreement until written notice is delivered to the County specifying the material breach or default with particularity and giving the County a reasonable opportunity to cure, not to exceed thirty (30) days. The license may only be revoked for cause when that material breach or default is not cured by the
County in the time given in which to cure that problem.

(32) **REMOVAL OF THE SKYWALK:** In the event the license to maintain the Skywalk or this Agreement is revoked, and the City deems it necessary to request the removal of the Skywalk, the removal shall be accomplished by a responsible party, as determined by the City, in a manner approved by the City, with all costs and expenses associated with the Skywalk removal to be paid by the County. The City hereby consents to the removal of the Skywalk by the County or its agents at any time, provided that such removal is performed by a responsible party, as determined by the City, in a manner approved by the City, with all costs and expenses associated with the removal paid by the County.

(33) **UTILITY RELOCATION:** With respect to any utility facilities requiring relocation or adjustment in connection with the construction of the Skywalk, the County agrees that said utility relocation or adjustment shall be in accordance with the detailed plans approved by the City, with all costs and expenses associated with the utility relocation or adjustment paid by County.

(34) **NONDISCRIMINATION:** The County, for itself, its representatives and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the property that no person on the grounds of race, color, religion, creed, national origin, disability, sex or age shall be denied the benefits of or otherwise be subjected to discrimination in the construction or use of the Skywalk.

(35) **AMENDMENTS:** Any change in this Agreement, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the County and the City.

(36) **AUTHORITY TO EXECUTE:** The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.
(37) **SEVERABILITY:** If any clause or provision of this Agreement is found to be void or unenforceable by a court or district of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(38) **SURVIVABILITY:** The County’s obligations to the City under this Agreement shall survive the revocation of its City license to construct and maintain the Skywalk.

(39) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the state of Missouri. The County shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

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

(41) **AUTHORITY TO GRANT LICENSE:** The parties enter into this Agreement with full understanding that the City, to the best of its knowledge and belief, has the authority to grant (or revoke) this license. The City makes no representation that it has full fee simple title to the highway property that is the subject of this Agreement. In the event this Agreement is rendered null and void based upon a determination that the City did not have the authority to grant this license on the subject property, the City will not be responsible for any damages, costs or other expenses incurred by the County in the implementation of this Agreement, or in the County’s design, construction, maintenance, repair, use or inspection of the Skywalk.

(42) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

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(A) To the County:
ATTN: County Executive
100 N. Third Street., Suite 318
St. Charles, MO 63304
With a copy to:
ATTN: County Counselor
100 N. Third Street, Suite 216
St. Charles, MO 63304

(B) To the City:
Attn: City Engineer
200 N Second Street
St. Charles, MO 63301
Facsimile No:636-940-4601
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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the ___________ this ______ day of ______________, 2020.

Executed by the City this _______ day of ________________, 2020.

St. Charles County, Missouri:

By: ________________________________
    Steve Ehlmann, County Executive

Registrar: __________________________

City of Saint Charles, Missouri:

By: ________________________________
    Daniel J. Borgmeyer, Mayor

Attest: ____________________________
    City Clerk