

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A BRIDGE WINGWALL AND GUARDRAIL LICENSE AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR THE CONSTRUCTION OF A BRIDGE WINGWALL AND GUARDRAIL ADJACENT TO ROUTE 109.**

**WHEREAS**, under §§ 70.210 to 70.320, RSMo., the City of Wildwood “may contract and cooperate with any ... political subdivision ... for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service”; and

**WHEREAS**, the Missouri Highways and Transportation Commission owns and maintains Route 109, including its associated structures and fixtures such as bridges, as part of the State Highway System; and

**WHEREAS**, the City owns and operates the Woods Road Bridge and land abutting Route 109 located on the Woods Road; and

**WHEREAS**, the City proposes to construct a bridge wingwall and guardrail adjacent to the right of way limits of Route 109 at highway centerline station 89+39.78; and

**WHEREAS**, in order to construct said bridge wingwall and guardrail, the City and the Commission desire to enter into a Bridge Wingwall and Guardrail License Agreement;

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**Section One.** That the form, terms, and provisions of the Bridge Wingwall and Guardrail License Agreement between the City of Wildwood, Missouri, and the Missouri Highways and Transportation Commission, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and they hereby are approved and the Mayor of the City of Wildwood, Missouri, is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

**Section Two.** Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

**Section Three.** Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

**Section Four.** This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this \_\_\_ day of January, 2017, by the Council of the City of Wildwood, Missouri, after having been read by title, or in full, two (2) times prior to passage.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
James R. Bowlin, Mayor

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

**Exhibit A**  
[attach Agreement]

CCO FORM: RW28  
Approved: 06/09 (AR)  
Revised: 01/15 (ASB)  
Modified:

COUNTY: ST. LOUIS  
ROUTE: 109

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
BRIDGE WINGWALL AND GUARDRAIL LICENSE AGREEMENT**

THIS AGREEMENT is entered into by the **MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION** (hereinafter, "Commission"), acting for and on behalf of its subordinate **MISSOURI DEPARTMENT OF TRANSPORTATION** (hereinafter "MoDOT"); and the CITY OF WILDWOOD (hereinafter, "CITY").

WITNESSETH:

WHEREAS, the Commission is an entity of the State of Missouri created by state law and owns and maintains Route 109, including its associated structures and fixtures such as bridges, as part of the State Highway System in St. Louis County, Missouri; and

WHEREAS, the CITY owns and operates the Woods Road Bridge and land abutting Route 109 (hereinafter "City of Wildwood's Property") located on the Woods Road; and

WHEREAS, the CITY proposes to construct a bridge wing wall and guardrail (hereinafter, "Proposed Structure") adjacent to the right of way limits of Route 109 at highway centerline station 89+39.78, pursuant to the plans and specifications as referred to herein, in order to access the City of Wildwood's property; and

WHEREAS, the Commission agrees to allow the CITY to pave a portion of the Commission's property for this purpose, and will license the CITY's users to cross the Commission's property on that paved Proposed Structure, subject to the terms and conditions herein stated.

NOW, THEREFORE, in consideration of the promises, covenants and representations in this Agreement, the parties agree as follows:

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

(A) CITY: This term means THE CITY OF WILDWOOD, a Missouri charter city.

(B) Commission: This term means the Missouri Highways and Transportation Commission, a state constitutional entity. Where the term "Commission" is used alone, it includes its subordinate agency, MoDOT, and the officials, agents,

representatives and employees of the Commission and MoDOT.

(C) MoDOT: This acronym means the Missouri Department of Transportation, a state executive branch department. Where the context permits, the term also includes the officials, agents, representatives and employees of MoDOT.

(2) LICENSE GRANTED: The Commission hereby grants the CITY, its successors and assigns, a non-exclusive license to build and maintain the Proposed Structure adjacent to Route 109 at the location described on Exhibit "A", attached hereto and incorporated herein by reference, and use such additional space adjacent to the Proposed Structure as may be reasonably necessary for working room during the period that the Proposed Structure is under construction and for maintenance of the Proposed Structure thereafter.

(3) CONSIDERATION FOR THIS LICENSE: In consideration of the payment of the sum of one dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Commission grants this license to the CITY to use the land and airspace within the area described in Exhibit "A" to design, construct, maintain, and use the Proposed Structure. This license is revocable by the Commission through MoDOT officials, agents and representatives at any time, with or without cause; and this license is automatically revoked by operation of law if the CITY violates any term or condition of this Agreement.

(4) WORK BY THE CITY: The CITY shall construct the Proposed Structure over or under Route 109 at highway station 89+39.78 pursuant to the plans and specifications referred to herein, to provide a safe way for Proposed Structure users of the Proposed Structure to access the City of Wildwood's property. The Commission hereby grants the CITY, its successors and assigns, a non-exclusive license to use such additional space adjacent to the Proposed Structure as may be reasonably necessary for working room during the period that the Proposed Structure is under construction, and for maintenance of the Proposed Structure thereafter. It is the intent of the Commission that this Agreement and the license granted hereby shall constitute a right to non-exclusive occupancy and use of the Proposed Structure by the CITY for the access of the City of Wildwood's property, until this license is revoked or terminated by the Commission. The CITY understands that it and the users shall use this Proposed Structure at their own risk.

(5) COMMISSION OWNERSHIP: The Commission reserves the ownership and ultimate use of the property over or under which the Proposed Structure will be located and its adjacent highway property for transportation purposes. This non-exclusive license prohibits the use or conversion of the licensed Proposed Structure property to a § 4(f) [23 U.S.C. § 138; 49 U.S.C. § 303] use, or potentially a § 6(f) [16 U.S.C. § 4601-8] use. It is expressly understood and agreed that the primary use and purpose of the Commission's property over or under which the Proposed Structure will be located, which is the subject matter of this license, shall be and remain as state highway property for transportation purposes only.

(6) CERTIFICATES/PERMITS: Since the Proposed Structure location is within a regulated floodplain, the CITY's Engineer will obtain, complete and/or provide the necessary permits and the no-rise certificate, which will certify that the proposed concrete surface and related Proposed Structure construction work will cause "no rise" in the 100-year flood elevation. This work shall comply with all Federal Emergency Management Administration (FEMA) and state and federal Clean Water Act permit and certification requirements.

(7) PROPOSED STRUCTURE DESIGN: The CITY and its consulting engineers, shall prepare final plans and final specifications for the Proposed Structure to be constructed on Commission property by the CITY. The Proposed Structure shall be designed to meet the requirements of the American Association of State Highway and Transportation Officials ("AASHTO"), the Americans with Disabilities Act (the "ADA"), and Commission design and construction standards. The CITY shall submit to Commission's District Engineer (the "District Engineer"), the final plans and specifications for the Proposed Structure and the adjacent segments, for written approval of the District Engineer, before any construction can begin on the Commission property. The general design and location of the Proposed Structure is shown on Exhibit "A."

(8) PROPOSED STRUCTURE PLANS APPROVAL: The Commission, through MoDOT, shall either approve or disapprove the final plans and specifications for the Proposed Structure within thirty (30) days of their receipt from the CITY. If the plans and specifications are not approved, MoDOT shall explain in writing what deficiencies exist that must be corrected before the Commission will approve those plans.

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

(10) PLAN SHEET: The plan sheet showing the property lines and Proposed Structure area subject to this license is attached to this Agreement as Exhibit "A" and incorporated herein by reference.

(11) CONSTRUCTION CONTRACTOR: The Commission acknowledges that CITY will enter into a construction contract with an approved contractor (the "Contractor") to construct the Proposed Structure and adjacent segments in accordance with the approved construction plans and specifications. The CITY shall include the following provisions in the appropriate construction contract with the Contractor:

(A) Commission Inspection: The Commission's agents and employees will be authorized to inspect the work on the Proposed Structure on Commission property, and to approve or disapprove such work in the same manner as if the

construction contract has been entered into between the Contractor and the State of Missouri acting by and through the Commission. The Commission agrees that all such inspections shall be conducted in a timely and reasonable manner.

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

(C) Responsible Party for Payment: The Contractor will look solely to CITY for payments pursuant to the CITY's construction contract, including, but not limited to, payments for base contract work and change order work, and for claims pursuant to the contract or for breach thereof. The CITY's Contractor shall have no claim rights against the Commission, MoDOT, or their officials, employees, agents, representatives, successors or assigns.

(D) Construction Bonds: In the event that CITY shall use an outside contractor, CITY shall acquire from the Contractor and shall deliver, prior to commencement of work on the tunnels, 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 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 City other than the Proposed Structure. The performance and payment bond requirement does not render the Proposed Structure construction project a public works project.

(12) RESTORATION OF COMMISSION PROPERTY: At all times during and after the construction of the Proposed Structure, the CITY and its Contractor shall maintain the Proposed Structure in a manner that will not injure or damage the paved highway facilities or any of the Commission property, except as specifically authorized herein. After construction of the Proposed Structure, the CITY shall restore the state property to its original condition or better, as determined by the District Engineer. Disturbed areas will be fine graded, seeded, mulched or sodded by CITY.

(13) PROPOSED STRUCTURE COST: CITY shall construct and maintain the Proposed Structure at its own cost and expense in accordance with the Final plans and final specifications approved by the Commission. If and when the highway is expanded, the CITY is fully responsible for the cost of any required modifications of the Proposed Structure.

(14) DURATION OF LICENSE: The Commission and the CITY agree that this license to design, construct, maintain, and use the Proposed Structure on Commission property shall exist indefinitely, subject to the Commission's right to revoke this license

at any time; which right of revocation shall be exercised reasonably. This license shall also terminate by operation of law if the CITY commits a material breach of this Agreement which is not promptly remedied and corrected by the CITY, and that breach is not excused or forgiven in writing by the Commission or its representatives.

(15) NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the Commission or MoDOT and the CITY as partners or joint venturers, or as jointly liable, in the CITY's design, construction, maintenance and operation of the Proposed Structure on Commission property for public use.

(16) NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY: The Commission states that to the best of its knowledge and belief, there has been no generation, transportation, storage, treatment, disposal, release, leakage, spillage or emission of any hazardous or toxic substance or material or any aboveground or underground petroleum product contamination on the subject property during the Commission's ownership of the property, and the Commission's representatives are not aware of the presence of any such hazardous or toxic substance or material, or petroleum product contamination, on the subject site. The Commission makes no warranty or representation concerning the possibility of or absence of, concealed property contamination by such substances or materials, and the CITY assumes the risk of their presence, unknown and undetected. If the CITY discovers actual or potential hazardous or toxic substances or materials, or petroleum contamination on the subject property, the CITY is requested to leave the property and notify the Commission's MoDOT representatives immediately.

(17) HUMAN REMAINS, SACRED OBJECTS AND ARTIFACTS: If human remains, or Native American or other sacred objects, artifacts or items of value are encountered during the design, construction, maintenance or use of the Proposed Structure, 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 Structure, to the best knowledge of MoDOT staff. However, if the CITY finds any human remains, sacred objects, artifacts, or other items of value on the subject property, the CITY shall immediately cease work on or the use of the Proposed Structure, and contact the Design-Historic Preservation Unit at MoDOT.

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

(19) TRAFFIC CONTROL PLAN, SIGNING AND SCHEDULING OF CONSTRUCTION: The CITY agrees to provide to the District Engineer a traffic control

plan for handling traffic during the contemplated Proposed Structure construction. The CITY agrees to provide construction signing in compliance with the Manual on Uniform Traffic Control Devices. This Agreement is conditioned upon written District Engineer approval of the traffic control plan and any revisions or modifications to the plan before construction may begin. All construction shall be scheduled to avoid or minimize disruption of traffic flow on Route 109 and other state highways. No state highway lane closures shall be authorized.

(20) MAINTENANCE AND REPAIR: At all times during the construction and after the completion of the Proposed Structure until the revocation of this license, the CITY shall maintain and repair at its own expense the Proposed Structure and all related CITY structures and approaches, so that these structures and the Commission's underlying and adjacent highway property will be kept safe and in good condition. The CITY's maintenance of the Proposed Structure and its vicinity shall be accomplished so as to cause no unreasonable interference with the use of or access to the Commission's state highway system. However, the CITY is not obliged to maintain any paved highway or shoulder area on Commission property, except for cleaning trash or items thrown from the Proposed Structure. Both parties agree that if this license is revoked, the obligations of the CITY under Section 7 of the Missouri Highways and Transportation Commission STP-Urban Program Agreement (the "STP Agreement"), entered into between the Commission and the CITY, and dated September 26, 2011, shall terminate as to the Proposed Structure only. To the extent that this Agreement conflicts with the STP Agreement, this Agreement controls and shall be deemed an amendment to the STP Agreement. By revoking this license, the Commission shall be deemed to have waived its right to enforce Section 7 of the STP Agreement as to the Proposed Structure and the Commission shall release and forever discharge the CITY from the CITY's obligations under Section 7 of the STP Agreement as to the Proposed Structure.

(21) COMMISSION ACTION IF THE CITY FAILS TO MAINTAIN PROPOSED STRUCTURE: If, within seventy-two (72) hours after receiving written or facsimile notice from the Commission reasonably requesting that the CITY perform maintenance or repairs on the Proposed Structure, the CITY (i) fails to begin the requested maintenance or repair work and (ii) such failure results in the Proposed Structure and adjacent Commission property not being clean, in good appearance and safe for use by CITY and its authorized users, the Commission (through MoDOT) shall have the authority, but not a duty or obligation, to maintain or repair the Proposed Structure on Commission property and charge all such costs of maintenance and repair to the CITY. If the CITY fails to begin making repairs within seventy-two (72) hours after receiving written or facsimile notice, or fails to continue with the repairs in a diligent manner to completion, the maintenance and repair work may be performed by MoDOT. However, if the District Engineer or his/her authorized representative determines that an actual or potential emergency exists that requires immediate repairs, then MoDOT may make immediate repairs without prior written notice, and charge those expenses to the CITY. Any Proposed Structure maintenance and repair expenses incurred by or on behalf of the Commission or MoDOT under this paragraph shall be the debt of, and shall be

chargeable to and fully compensated by, the CITY. The CITY's failure to maintain or repair the Proposed Structure in accordance with this Section shall constitute a material breach of this Agreement by the CITY. Likewise, the CITY's failure to promptly pay the Commission or MoDOT for the costs to maintain or repair the Proposed Structure in accordance with this Section shall constitute a material breach of this Agreement by the CITY.

(22) REQUIRED INSPECTIONS OF STRUCTURE:

(A) After completion of the construction of the Proposed Structure on the Commission's property, the CITY and its successors and assigns shall be required to have scheduled inspections of that structure by a registered engineer at least annually, to insure the safety of the Proposed Structure for the traveling public.

(B) The CITY shall be responsible for promptly submitting copies of all written annual or other Proposed Structure inspection reports to the following: (1) To the Commission's District Engineer having responsibility for Route 109; and (2) To the Commission's State District Engineer, located in the Commission Headquarters Building in Jefferson City, Missouri.

(23) INDEMNIFICATION:

(A) To the extent allowed 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. Notwithstanding anything herein to the contrary, no provision, term, or condition in this Agreement shall constitute, or be construed as, a waiver of the defenses of sovereign immunity, official immunity, or governmental immunity, by whatever name, as set forth in Section 537.600 RSMo. et. seq., for any monetary amount whatsoever, or of any other defenses, howsoever named, that are, or in the future may become, available to the parties by statute or common law.

(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 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 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 COMMISSION LIABILITY: In the event the Commission receives notice of any claim against it related to or arising out of the negligent or insufficient design, construction, maintenance, use or inspection of the Proposed Structure, the Commission will promptly notify the CITY in writing, attaching a copy of such claim or summarizing its content and the name of the claimant, if not in writing. The CITY shall, through its own legal counsel, proceed to defend the Commission as allowed by Missouri law, MoDOT, and their members, employees, officers and agents, from any such claim, and the Commission will fully cooperate with the CITY and its attorneys in their defense of these state entities, officials and employees. This CITY obligation to indemnify and defend shall not apply to or be deemed to include the intentional or negligent acts or omissions of the Commission or MoDOT, or their members, officers, agents and employees.

(25) LIABILITY INSURANCE: The CITY agrees to provide the Commission with liability insurance for coverage of the injuries and damages for which it, as a political subdivision, is legally obligated under Missouri law to pay, 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) except for those claims governed by the provisions of the Missouri workers' compensation law, which policy shall provide workers' compensation for the statutory limits in accordance with Chapter 287, RSMo 2000, as amended. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits for that insurance coverage which shall be subject to adjustment periodically, in a written notice from the Commission to CITY.

(A) Additional Named Insured: Each such insurance policy shall specify as the "insured" or "additional named insured" the Commission, MoDOT, 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 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 Proposed Structure on Commission property, for as long as that Proposed Structure remains open for public use of it and the adjacent segments. Upon request, the CITY shall provide the Commission and/or MoDOT with a copy of a certificate of insurance, showing that such insurance is in effect. And if any claim or suit is brought against the Commission or MoDOT, or their officials, employees, agents or representatives, the Commission and/or MoDOT may require the CITY to provide a full and complete copy of all applicable policies of insurance, appropriately endorsed.

(26) ASSUMPTION OF RISK: The CITY, by signing this license agreement, acknowledges that it has carefully read this legal document, and that it understands that the Commission property has vehicular traffic and other potential hazards on it that cannot reasonably be protected against, or warned of, in advance. By signing this license agreement, the CITY agrees to comply with the safety instructions it receives in this document and from MoDOT employees; the CITY acknowledges the existence of these and other risks on Commission property, and agrees to assume these risks by accepting this license, and by opening the Commission's highway property for the uses and activities authorized in this Agreement.

(27) LICENSE REVOCABLE – NO ASSIGNMENT: This license is revocable by the Commission or any appropriate MoDOT official if the CITY designs, constructs, maintains, uses or inspects the Proposed Structure in a negligent, reckless, wrongful or unsafe manner, or refuses to follow contract or safety instructions of MoDOT officials, or in any way breaches the terms of this license agreement. The CITY understands that it shall not assign or delegate any interest in this Agreement and shall not transfer any interest in or use of this license to another. This license is granted solely to the CITY and MoDOT authorized staff, and to no other person or entity.

(28) REVOCATION OF AGREEMENT: This license to construct, maintain, and use the Proposed Structure for access to the city of Wildwood's property is granted in this Agreement at the pleasure or discretion of the Commission. The occurrence of any one or more of the following shall constitute a material breach of this Agreement, rendering the CITY in default and, at the discretion of the Commission or its representatives, may result in the revocation of this license:

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

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

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

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

(E) Change in Use: The CITY changes or attempts to change the use, purpose or location of the Proposed Structure, without prior written approval of the Commission;

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

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

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

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

(J) Redesign, Relocation, or Alteration of Highway: In the event that the Commission should find that it is necessary to redesign, relocate, or alter the highway at this location, the Commission, at its sole discretion, may terminate this license. Further, should the Commission find that changes to the highway or the Proposed Structure should be made at this location, but the Commission does not desire to terminate this agreement, the CITY shall bear the costs to relocate or modify the Proposed Structure to accommodate the Commission's redesign.

(29) RIGHT TO ENTER UPON THE PROPOSED STRUCTURE:

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

(B) During Maintenance, Repair or Reconstruction: The Commission,

MoDOT, and their officials, employees, agents and representatives shall have the right to enter upon the Proposed Structure and to inspect and approve all work, materials and equipment there, during any maintenance, repair or reconstruction of the Proposed Structure, at such times as CITY employees or agents may be present, without prior notice to or approval of CITY.

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

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

(30) ADVERTISING RESTRICTIONS: No billboards or advertising is to be placed on or over the Commission's property or airspace, either within, on, attached to or apart from the Proposed Structure.

(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 CITY specifying the material breach or default with particularity and giving the CITY a reasonable opportunity to cure, not to exceed thirty (30) days. The license may only be revoked for cause when that material breach or default is not cured by the CITY in the time given in which to cure that problem.

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

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

the CITY agrees that said utility relocation or adjustment shall be in accordance with the detailed plans approved by the Commission, with all costs and expenses associated with the utility relocation or adjustment paid by CITY.

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

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

(36) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(37) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or district of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(38) SURVIVABILITY: The CITY's obligations to the Commission under this Agreement shall survive the revocation of its Commission license to construct and maintain the Proposed Structure.

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

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

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

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

(A) To the City:  
16860 Main Street  
Wildwood, MO 63040  
Facsimile No: 636-458-6969

(B) To the Commission:  
1590 Woodlake Drive  
Chesterfield, MO 63017  
Facsimile No: 573-522-6480

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 City this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Executed by the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

**CITY OF WILDWOOD**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Attest: (SEAL)

Attest: (SEAL)

\_\_\_\_\_  
Secretary to the Commission

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

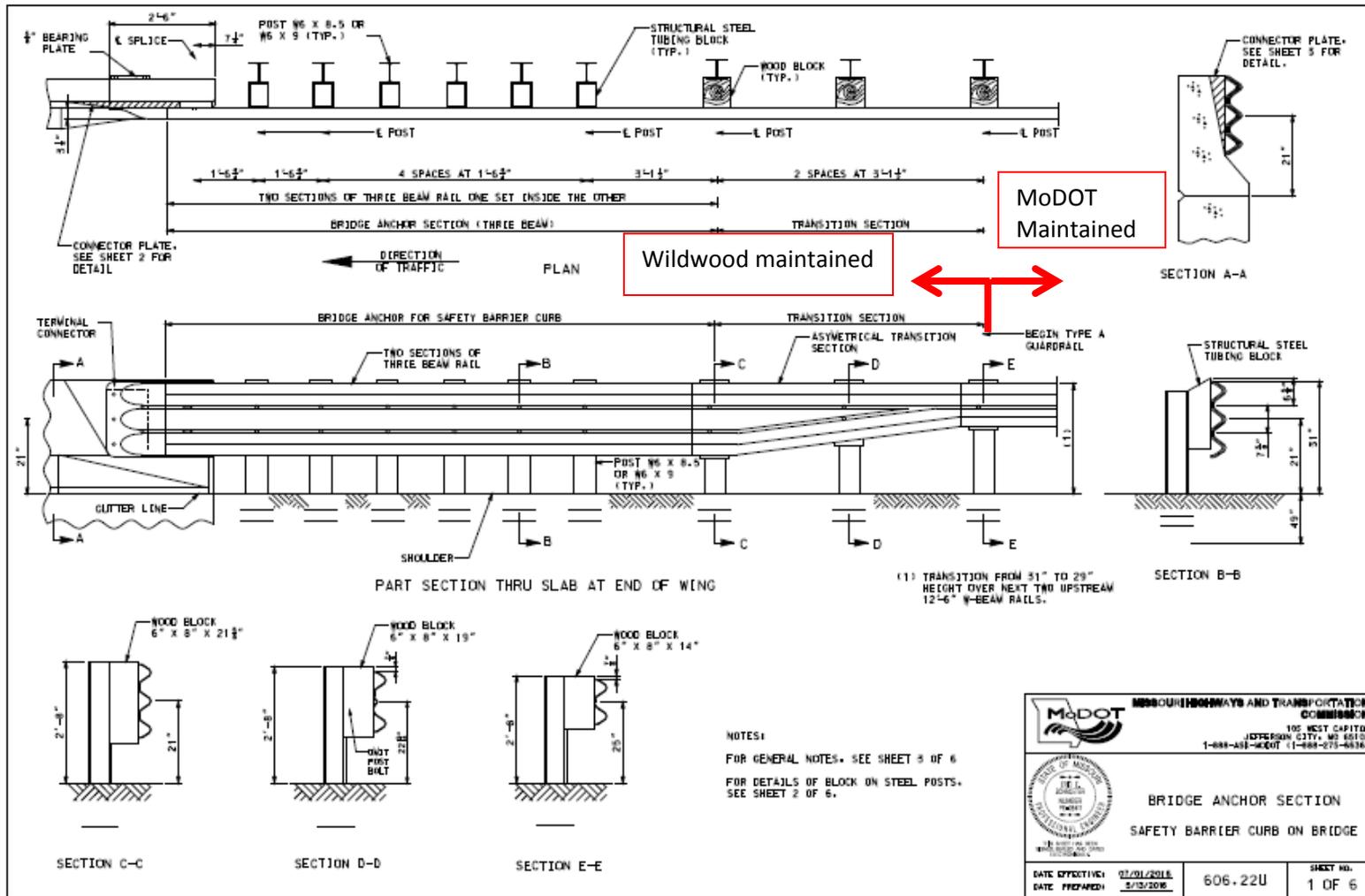
\_\_\_\_\_  
Commission Counsel

By: \_\_\_\_\_

Title: \_\_\_\_\_

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





IF A SHEET IS PRESENT ON THIS SET OF THIS WORK, IT SUPERSEDES ALL OTHER SHEETS OF THIS SET.

MoDOT and Wildwood Guardrail Maintenance at Route 109 and Woods Road Bridge - MoDOT's guardrail maintenance would end at the Type A Guardrail and Wildwood would maintain the Guardrail Transition and Bridge Anchor Section.