Introduced by		Council Bill No	<u>R 206-13</u>
	A RESC	DLUTION	
Thomas Friedric	ch and Clara J ry constructior	ense agreement with the ane Friedrich Common access for the replace re.	n Trust to
BE IT RESOLVED BY THE (FOLLOWS:	COUNCIL OF	THE CITY OF COLU	MBIA, MISSOURI, AS
SECTION 1. The City license agreement with the H Trust to provide temporary transmission structure. The forforth in "Attachment A" attachment verbatim.	lenry Thomas construction rm and conten	Friedrich and Clara Ja access for the replace t of the agreement shal	ane Friedrich Commor cement of a deficien I be substantially as se
ADOPTED this	_ day of		, 2013.
ATTEST:			
City Clerk		Mayor and Presidi	ng Officer
APPROVED AS TO FORM:			
City Counselor			

IRREVOCABLE LICENSE AGREEMENT

WHEREAS, Owner is the fee simple title owner of certain real estate described in "ExhibitA," which is attached hereto and incorporated herein; and,

WHEREAS, Owners predecessor in title previously granted City an easement for the purpose of entry, construction and maintenance of the existing power lines, dated October 5, 1967, and recorded in Book 135, Page 514 of the Cooper County, Missouri records; and,

WHEREAS, there is maintenance and construction work that needs to be performed both within the easement area and outside the easement area, and,

WHEREAS, City desires to obtain an irrevocable license to enter upon the land of Owner and to clear and grub field site of vegetation, strip topsoil, grade site, construct and install perimeter erosion, sediment controls, concrete washouts, diversion swales, gabions, retaining walls, apply level spreader, seed site with native grasses, and remove temporary erosion and sediment control structures in the area set forth in "Exhibit B," attached hereto and incorporated herein by reference herein and to have the continuing right to enter for purposes of ongoing maintenance during the term of this irrevocable license, and Owner is willing to grant such an irrevocable license.

NOW, THEREFORE, in consideration of the foregoing recitals, which the parties agree are good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of Irrevocable License

Owner owns real estate described on **Exhibit A.** Owner grants to City, its agents, employees and contractors an irrevocable license to enter upon the land of Owner and to clear and grub field sit of vegetation, strip topsoil, grade site, construct and install perimeter erosion, sediment controls, concrete washouts, diversion swales, gabions, retaining walls, apply level spreader, seed site with native grasses, and remove temporary erosion and sediment control structures in the area set forth on "**Exhibit B**," attached hereto and incorporated herein by reference, said license for ingress and +egress being over the presently existing private path and is 15 feet in width except the license is expanded to 30 feet in width for approximately 200 feet from the top of the hill to the bottom. Although the area in **Exhibit B** is not specifically defined by survey, Owner acknowledges he is aware of its location on his property and waives any requirements of surveyed boundaries. Representatives of the City of Columbia are also aware of the location of the license for ingress and egress and agree to stay within the limits of said license area. The grading and drainage plan to be

constructed is shown on Exhibit C attached hereto and incorporated herein by reference.

2. Access

The approximate path of access is designated by a line marked on **Exhibit B**. It is understood by the parties this is not intended to be restrictive but illustrates the general pathway City will use to access property and is included in their irrevocable license. While the lines marked on Exhibit B are not restrictive, the easement for ingress and egress is limited to 15 feet in width over the existing private path except it widens to 30 feet in width for approximately 200 feet from the top of the hill to the bottom of the hill. City understands and agrees they will not get into the lake area adjoining the easement.

3. Easement to Remain in Force

The easement dated October 5, 1967 and recorded in Book 135, Page 514 of the Cooper County, Missouri records shall remain in full force and effect and this irrevocable license shall be in addition to such easement and not intended to replace or revoke said easement.

4. Term of Irrevocable License

This irrevocable license shall be effective as of the date the same is executed by all parties and shall continue in effect for a period of five (5) years and terminate at the end of said 5 year period. It is understood and agreed that at no time shall this document be construed to release the City from any damages to Owner if the City gets off of the easement area. City's rights under this license shall not commence until the agreement has been signed by both parties and payment made by City to Owner and City agrees not to commence any construction or take any action under this license agreement until payment is made.

5. Consideration

City shall pay the sum of Fifteen Thousand Dollars (\$15,000.00) for said irrevocable license, due at the time of signing this Agreement by City.

6. Nonexclusive Use

The area designated on **Exhibit B** may be used on a nonexclusive basis by City.

7. Conditions and Stipulations

- A. All construction work shall be performed at City's sole cost and expense. All work shall be performed in accordance with the plans and specifications prepared by City. In the event City hires contractors to perform the work, City shall promptly pay contractors to protect Owner from any mechanic liens on said property.
- B. City shall assume the risk of and protect, indemnify and hold harmless Owner against liability for or account of injury to or death of any persons or damage to property resulting from the construction, maintenance or dirt work performed by City or its contractors, during the term of the irrevocable license.
- C. This Agreement does not create any rights, claims or causes of action in favor of any non-parties to the Agreement.

D. All construction, maintenance and dire work shall be performed in a workmanlike manner and the construction area shall be left in a safe condition.

8. Notices

All notices regarding this Agreement must be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law.

For Notice to Owner:

For Notice to City:

Henry Thomas Friedrich and

Clara Jane Friedrich 26900 Highway 179 Wooldridge, MO 65287 City of Columbia

Director of Water and Light

PO Box 6015

Columbia, MO 65205-6015

Tel: 573/874-7325

Either party may change the address to which or official to who notice is to be given by giving notice of the change to the other party.

9. Governing Law/Jurisdiction

This Agreement shall be construed in accordance with the laws of Missouri. Should any terms of this Agreement be litigated, venue shall be proper only in the Circuit Court of Boone County, Missouri or the United States District Court for Western Missouri. If any term of this Agreement is found by a court of competent jurisdiction to be void or invalid, such finding shall not affect the remaining terms of this Agreement, which shall remain in effect.

10. No Attorneys' Fees

Each party hereto agrees that in any action to enforce the terms of this Agreement, each party shall be responsible for its own attorneys' fees and costs.

11. Sole Benefits of Parties

This Agreement is for the sole benefit of City and Owner. Nothing in this Agreement is intended to confer any rights or remedies on any third party.

12. Entire Agreement

This Agreement constitutes the entire Agreement and understanding of the parties. No modification, amendment or waiver of any provisions of this Agreement or any of the rights or obligations arising hereunder shall be valid unless in writing and executed by both parties.

13. Non-Waiver of Sovereign Immunity

Nothing in this Agreement shall be deemed to be a waiver of sovereign immunity or public official immunity by City.

14. Binding Affect

This irrevocable license and the provisions it contains shall be binding on the parties, their heirs, successors and assigns.

15. Subject to Revenue

The obligations of City under this Agreement, which require the expenditure of funds, shall be conditional obligations, subject to the availability of funds appropriated for those purposes and payable out of revenues received from the sale of electricity to City's retail customers only when earned or due Seller in accordance with the provisions of this Agreement shall not be construed to be general obligations of the City of Columbia or a debt of the City of Columbia within the meaning of the Constitution and the Laws of the State of Missouri.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized agents on the day and year first above written.

CITY OF COLUMBIA, MISSOURI Mike Matthes, City Manager ATTEST: Sheela Amin, City Clerk APPROVED AS TO FORM Nancy Thompson, City Counselor STATE OF MISSOURI) SS) COUNTY OF BOONE On this day of , 20 , before me appeared Mike Matthew, to me personally known, who, being duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this Irrevocable License Agreement was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this Irrevocable License Agreement to be the free act and deed of the City. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written. Notary Public My commission expires: **OWNER** By: Hara Jane Friedrich, Trustee By: Clara Jane Friedrick:

Clara Jane Friedrich, Trustee TRUSTEES UNDER THE HENRY THOMAS FRIEDRICH AND CLARA JANE FRIEDRICH COMMON TRUST DTD JUNE 21, 2006

STATE OF MISSOURI)	
) ss.	
COUNTY OF COOPER)	
On this day of day of day of Henry Thomas Friedrich and Clara Jane Friedrich persons described in and who executed the for that they executed the same as their free act and the same as the same as the day of day	egoing instrument and acknowledged
IN TESTIMONY WHEREOF, I have here seal, at my office in Boonville, Missouri, the day	41/ML
Hotal y 1 Jubile, Otale	: Of Missouri
My commission expires:	
,	RICHARD J. BLANCK
	Notary Public - Notary Seal STATE OF MISSOURI
	Commissioned for Cooper County
	My Commission Expires: November 20, 2014
	ID. #10466825

All that part of the following described tracts of land which lie south and west of the right of way of the Mo. Pacific Railroad, to wit: The southeast quarter of the southwest quarter of Section 10, & the northeast quarter of the northwest quarter & the north half of the northeast fractional quarter of Section 15 all in Township 48 north, Range 15, west of the 5th Principal Meridian.

All that part of the west half of the southwest quarter of Section 10 which lies south of the bluffs, containing 29.35 acres, more or less; the east half of the northwest quarter of the northwest quarter of the northwest quarter of the southeast quarter of the northwest quarter containing 41 acres by actual survey, of Section 15; all that part of the northeast quarter of the southwest quarter which lies north of the middle of public road, containing 4 acres, more or less, of Section 15; the south half of all that part of the northeast quarter which lies west of New Madrid Survey #2875, containing .35 acres, more or less, of Section 15, subject to R/W of Mo. Pac. Railway as now located over and across the same, all in Township 48, Range 15 and containing in all 129.85 acres, more or less. Excepting therefrom R/W for highway. Excepting from above all that part lying south of Highway 179, Copper Carty, Millouric

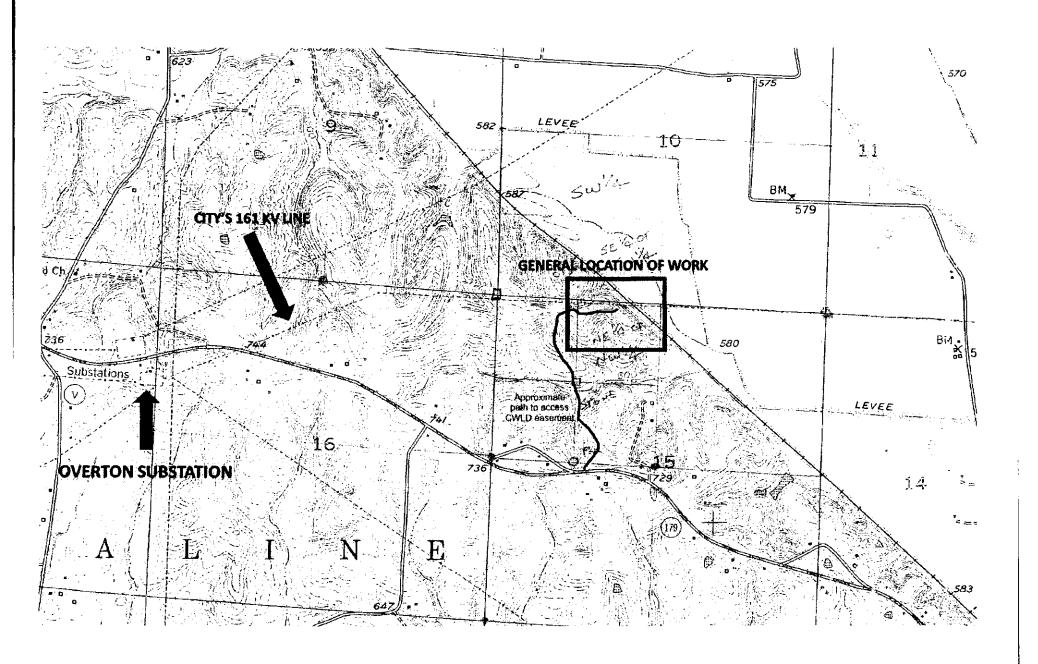


Exhibit B

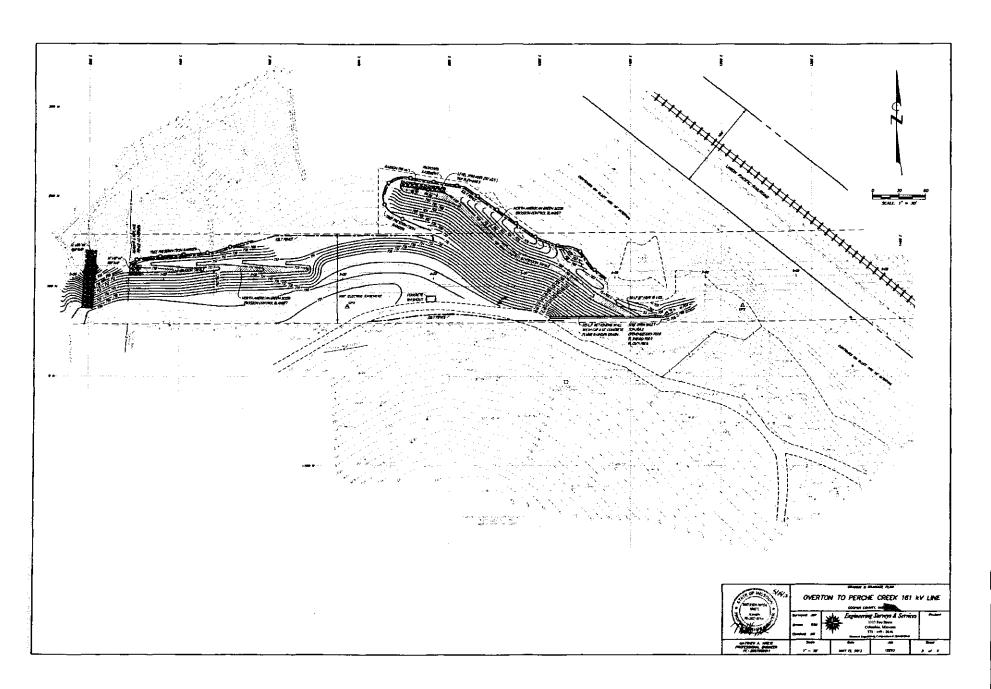


Exhibit C

Source: Water & Light 7

To: <u>City Council</u> From: <u>City Manager and Staff</u>

Council Meeting Date: Oct 7, 2013

Agenda Item No:

Re: Irrevocable License Agreement to Access and Maintain Electric Transmission Facilities on Property Situated in Cooper County

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a resolution authorizing the City Manager to execute an Irrevocable License Agreement in the amount of \$15,000 with Henry Thomas and Clara Jane Friedrich of Woolridge, Missouri to provide temporary construction access for the replacement of a deficient transmission structure on their property. This agreement allows construction access and site grading necessary to stabilize the site to prevent the recurrence of slope failures outside the existing easement that led to the degradation of the existing transmission structure.

DISCUSSION:

This license agreement is necessary to provide temporary access for the maintenance of a deficient wooden H-frame structure (structure 11+52) on the City's Overton to Perche Creek Substation 161 kV transmission line. This structure is situated on the river bluff on the west side of the Missouri River in Cooper County. Site analysis has determined that continued erosion around structure 11+52 will eventually cause a collapse of the structure resulting in a major transmission line outage. The degradation of structure 11+52 is caused by a major slope failure occurring along the bluff top. Staff has determined that repair of this structure will require the reconstruction of the structure back away from the area of slope failure together with grading and structural improvements to mitigate the erosion causing the slope failure.

The existing transmission line structure is situated in an existing easement recorded on October 5, 1967 in Book 135, Page 514 of the Cooper County, Missouri records. Because of the lineal alignment of this easement and the rough terrain surrounding the facilities, construction access and the grading work necessary to stabilize the site, can not be accomplished within the existing easement limits. This license agreement will allow for temporary construction access to the site for the hauling of materials, equipment ingress and egress, and allow the grading necessary to stabilize the area of slope failure. This agreement shall become effective on the date of execution and will remain in effect for a period of (5) years in consideration of a payment of fifteen thousand dollars (\$15,000) to the propert owners; Henry Thomas and Clara Jane Friedrich.

FISCAL IMPACT:

A one time payment of fifteen thousand dollars (\$15,000) will be made to Henry Thomas and Clara Jane Friedrich in consideration of granting this irrevocable license agreement. Funding for this project is programmed in Capital Improvement Project EL0101 for replacement existing transmission line systems.

VISION IMPACT:

http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php

None

SUGGESTED COUNCIL ACTIONS:

Approval of a Resolution authorizing the City Manager to execute a irrevocable license agreement with Henry Thomas and Clara Jane Friedrich.

FISCAL and VISION NOTES:								
City Fiscal Impact Enter all that apply		Program Impact		Mandates				
City's current net FY cost	\$15,000.00	New Program/ Agency?	No	Federal or State mandated?	No			
Amount of funds already appropriated	\$15,000.00	Duplicates/Expands an existing program?	No	Vision Implementation impact				
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site				
Estimated 2 year net costs:		Resources Required		Vision Impact?	No			
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #				
Operating/ Ongoing	\$0.00	Requires add'I facilities?	No	Secondary Vision, Strategy and/or Goal Item #				
		Requires add'l capital equipment?	No	Fiscal year implementation Task #				