

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 146-12

AN ORDINANCE

authorizing a Transportation Contract (FastCAT Express Bus Transit Agreement) with Walnut II LLC and College and Walnut, LLC; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a Transportation Contract (FastCAT Express Bus Transit Agreement) with Walnut II LLC and College and Walnut, LLC. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2012.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

TRANSPORTATION CONTRACT
(FastCAT Express Bus Transit Agreement)

This Transportation Contract ("this Agreement") is made and entered into and shall be effective as of this 19th day of June, 2012, by and between **The City of Columbia, Missouri**, a home rule charter city and political subdivision of the State of Missouri (the "City"), and **Walnut II LLC**, a Missouri limited liability company, and **College and Walnut, LLC**, a Missouri limited liability company (collectively referred to as the "Developer").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

1. **Definitions:**

- a. "Buses" means the buses described in paragraph 3 of this Agreement.
- b. "City" means The City of Columbia, Missouri, a home rule charter city and political subdivision of the State of Missouri, 701 East Broadway, Columbia, Missouri 65201.
- c. "Council" means the City Council of the City of Columbia, Missouri.
- d. "Developer" means Walnut II LLC, a Missouri limited liability company and College and Walnut, LLC, a Missouri limited liability company, 3301 Berrywood Drive, Suite 103, Columbia, Missouri, 65201.
- e. "Developments" means the apartment complexes owned by the Developer located on the north and south sides of Walnut Street immediately west of and adjacent to College Avenue in Columbia, Missouri.
- f. "Downtown Pick-Up Sites" means the bus stops depicted on the FastCAT Express Route.
- g. "FastCAT Express Route" means the City's schedule for same which provides regular bus service on the streets and at the bus stops shown on the illustration of same which is appended to and incorporated in this Agreement.
- h. "This Agreement" means this Agreement and all attachments hereto.
- i. "University" means the University of Missouri campus in Columbia, Missouri.

j. "University Pick-Up Sites" mean the pick-up sites in front of Brady Commons on the University's campus and the bus stop locations within the University's campus as depicted on the "FastCAT Express Route" attached to this Agreement.

2. **Recitals of Pertinent Facts:** This Agreement is made in view of the following facts which the City and Developer believe are true:

a. Developer is in the process of completing a large student apartment complex on the north side of Walnut Street immediately west of College Avenue and plans to construct an equivalently large student apartment complex on the south side of Walnut Street immediately west of College Avenue in Columbia, Missouri.

b. The City's Transportation Department operates buses and public transportation through its Public Works Department. The City intends to acquire the Buses to meet the current demand for public transportation in the downtown Columbia area and to operate the Buses over the FastCAT Express Route commencing on or about August 15, 2012. The Buses which will operate along this route will have identical paint schemes and designs. Said paint scheme and design will be substantially similar to that illustrated on the depiction attached to this Agreement and incorporated herein by reference.

c. Developer desires that bus transportation be available to the residents of the Developments on a regular basis so that Developer's tenants will have dependable transportation between the Developments and the University.

d. The City is willing to provide regular bus transportation to the tenants in the Developments in consideration of the payments by the Developer to the City described in paragraph 7 of this Agreement.

e. The City and Developer believe that there is good and valuable consideration to support the various promises and undertakings specified in this Agreement.

3. **Buses:** The City agrees to acquire the Buses described in this paragraph, at City's expense, and thereafter to cause to operate the Buses pursuant to the terms of this Agreement. Furthermore:

a. The Buses to be acquired pursuant to this Agreement shall be passenger transportation vehicles which are eligible to be operated by the City pursuant to pertinent Federal Transportation Administration Directives and Regulations, and which have been duly inspected and certified as such pursuant to said federal regulations.

b. The Buses must be equipped with handicapped accessible ramps or lift devices which will allow persons in wheelchairs to gain access to the interior of each Bus.

c. At least two (2) substantially identical Buses shall be acquired by the City pursuant to this Agreement and shall be painted and designed substantially identically to the depiction thereof attached to this Agreement in time to commence operations over the FastCAT Express Route on August 15, 2012.

d. Following the acquisition of the Buses by the City, the City shall operate the Buses, at the City's expense, in accordance with the schedule described in paragraph 6 of this Agreement.

4. **Sponsorship of Buses:** The City agrees to allow the Developer to be the exclusive "sponsor" of the Buses during the term of this Agreement pursuant to the following:

a. The cost of the bus sponsorship for the Buses shall be Ten Thousand Dollars (\$10,000.00) per twelve (12) month term of this Agreement, i.e., the Developer's annual payment to the City (which shall be due on or before August 15 in each calendar year for the pertinent twelve (12) month period thereafter) shall be Ten Thousand Dollars (\$10,000.00).

b. The Developer's sponsorship of the Buses shall be publicized in the manner illustrated on the depiction of the Buses which is attached to this Agreement and incorporated herein by reference. The Developer's sponsorship shall be "exclusive" in that no other business or enterprise shall be permitted to advertise or be reflected on the Buses without the Developer's express written consent in each instance, which may be withheld by the Developer, in the Developer's discretion.

5. **Term:** The term of this Agreement shall be for a period of five (5) years commencing on August 15, 2012, and ending on May 15, 2017. However, this Agreement shall be automatically renewed for successive additional periods of one (1) year each thereafter unless either the Developer or the City gives written notice prior to the expiration of the then currently effective agreement at least thirty (30) days prior to the expiration thereof. In other words, and for example, if the Developer does not desire to renew this Agreement for the period August 15, 2017, through May 15, 2018, the Developer shall be required to give written notice to that effect no later than April 15, 2017; otherwise this Agreement shall automatically be renewed for the period August 15, 2017, through May 15, 2018. Each annual renewal period shall be deemed to expire on May 15, and therefore notice of non-renewal by either the City or the Developer must be given prior to April 15 in the pertinent year in order to effectively terminate this Agreement. Notwithstanding the foregoing, however, the Developer shall have the right to terminate this Agreement based on the City's failure to provide the resources and service required pursuant to this Agreement, as specified in paragraph 12, below.

6. **Schedule for FastCAT Express Route:** The Buses shall operate over the FastCAT Express Route based on the following terms and conditions:

a. Each designated Downtown Pick-Up Site and University Pick-Up Site shall be visited by a FastCAT Express Bus no less frequently than every fifteen (15) minutes during the first twelve (12) months in which this Agreement shall be in effect, and no less frequently than every ten (10) minutes in each year during which this Agreement shall be in effect thereafter.

b. The FastCAT Express Buses shall operate during the period August 15 through December 15 and from January 15 through May 15 in each calendar year during which this Agreement shall be in effect, i.e., the period of operation shall be approximately coincident with the University's fall and spring semester schedules.

c. The FastCAT Express Buses shall operate six (6) days a week, Monday through Saturday.

d. The hours of operation of the FastCAT Express Buses shall be from 7:30 a.m. until 5:00 p.m. on Mondays, Tuesdays, and Wednesdays of each week, and from 7:30 a.m. until 7:30 p.m. and then from 9:45 p.m. until 1:45 a.m. on Thursdays, Fridays, and Saturdays (such that the completion of the last bus route on Saturday is 1:45 a.m. on the next succeeding Sunday morning).

e. Only one Bus shall be required for the FastCAT Express Route during the period 9:45 p.m. through 1:45 a.m.; accordingly, the "night-time route" shall only require that riders have access to a Bus every thirty (30) minutes.

7. **Payments for Bus Passes:** The City agrees to utilize the following rates for ridership on the City's buses, which shall be applicable to the Developer's tenants, to-wit:

a. An individual semester pass (for the period August 15 through December 15, or January 15 through May 15, as applicable) shall be priced at One Hundred Dollars (\$100.00).

b. For bulk purchases of rider passes of between twenty (20) ridership passes and nine hundred ninety-nine (999) passes per semester, the "bulk rate" price shall be Sixty-Two and 50/100 Dollars (\$62.50) per pass.

c. For bulk purchases of ridership passes of more than one thousand (1,000) passes per semester, the bulk rate price shall be Fifty Dollars (\$50.00) per pass.

d. The City is authorized to increase the above rates based on the Cost of Living Index ("CPI-U") from time to time in order to take into account the City's increased costs in operating said City's Bus Transit System.

e. The FastCAT Express Route passes need not grant a rider access to the rest of the City's bus transit system, i.e., for those rider wishing to use the City's bus transit system for routes other than the FastCAT Express Route, the City shall be free to charge an additional fee and impose additional requirements for same, in the City's discretion.

f. Each bus pass shall be personalized to the maximum extent possible for each of the Developer's tenants so that bus passes cannot be utilized by any person other than the intended recipient thereof.

8. **Purchase and Allocation of Passes for Developer's Tenants:** The Developer agrees to purchase the same number of bus passes as the Developer has tenants in Developer's developments on Walnut Street each semester during the period in which this Agreement is in effect. Furthermore:

a. The Developer agrees to purchase ridership passes for FastCAT Express Route riders who are tenants of the Developer prior to the commencement date of each semester's operating schedule, i.e., prior to (as applicable) August 15 or January 15.

b. The Developer shall be responsible for educating the Developer's tenants as to the FastCAT Express Route and for distributing and monitoring the possession and use of said passes by each of Developer's tenants. Bus passes shall be non-transferrable.

9. **GPS Information:** The City shall arrange for each bus to have GPS locator equipment installed on each FastCAT Express Bus so that riders are able to access information over the Internet as to the present location of each of the City's buses operating in the Downtown Loop (and thus have information as to the estimated time of arrival of the next bus at a particular bus stop).

10. **Sports TV:** The City agrees to install televisions sets on each Bus tuned to ESPN stations (or the equivalent) for viewing by riders on said Buses.

11. **Cooperation in Advertising and Promotion of Route:** The Developer agrees to be reasonably available from time to time and to assist the City in publicizing and promoting the Downtown Loop or the FastCAT ExpressRoute. The Developer agrees to distribute to each of the Developer's tenants City's brochures concerning the City's downtown bus route and loop and the tenant's eligibility to ride on said buses, and to undertake such additional educational efforts as may be reasonably required so that the Developer's tenants utilize said buses to the maximum extent reasonably possible instead of operating their personal vehicles.

12. **Maintenance of Level of Service and Quality:** The City agrees to use reasonable efforts and to devote sufficient resources to the FastCAT Express Route so that it operates in a timely manner, so that Developer's tenants may depend and rely upon same, and such that the Developer is not reasonably required to once again utilize the Developer's private bus system in order to meet the needs of the Developer's tenants. However, if after reasonable notice and opportunity to cure any

material deficiencies, the City fails to correct deficiencies in the operation of the FastCAT Express bus service and thus fails to meet the needs of Developer's tenants in said regard, then the Developer shall have the right to terminate this Agreement and once again utilize the Developer's private bus system instead of the FastCAT Express system and to cease making payments to the City as described above.

13. **Operational Costs (Drivers):** During the term of this Agreement (and any Renewal Term), the operators of the Buses shall be City employees, supervised by the City, in accordance with pertinent City regulations and requirements. No driver of any Bus shall be considered at any time to be under the control of, employed by, or agents of Developer. The City shall at all times be responsible for the discipline, compensation of, supervision of, and employment of the drivers who operate the Buses during the term of this Agreement (including any Renewal Term). All operating costs and repair costs related to the operation of the Buses during the term of this Agreement (including any Renewal Term elected by Developer) shall be paid by the City.

14. **Insurance and Liability:** During the term of this Agreement (including any Renewal Term) the City shall insure or shall self-insure, in reasonable amounts, against liability to any person for personal injuries or for property damage caused by the negligent or improper operation of the Buses. The City, as the owner and operator of the Buses, shall be entitled to whatever principles of sovereign immunity may apply under the laws of the state of Missouri with respect to said operations. However, in any and all events, Developer shall have no liability whatsoever under any circumstances for any injury caused to any person or damage caused to any property as a result of the operation of the Buses during the term of this Agreement (including any Renewal Term).

15. **Adjustments to Schedule:** The City shall have the right to modify its routes for the Buses from time to time to assure that the Buses are reasonably full of riders and shall not be required to maintain a schedule when custom and practice indicates that ridership to and from the Developments is not needed. However, the City recognizes that the primary purpose of this Agreement is to assure residents of the Developments convenient, predictable, and regular transportation between the University and the Developments, and the City shall modify the schedule of the Buses only if it can do so without violating this principle and primary purpose.

16. **Good Faith Adjustments:** The arrangements specified in this Agreement represent new concepts and may require that Developer and the City meet and confer on a regular basis and enter into reasonable and good faith adjustments to this Agreement in the event either Developer or the City believes that adjustments are required. The parties agree to modify this Agreement in order to preserve the intents and purposes hereof if subsequent circumstances reasonably require such modifications.

17. **Miscellaneous:**

a. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the respective successors to heirs, and legal representatives of the parties hereto.

b. Missouri Contract. This Agreement shall be deemed a Missouri contract and construed according to the laws of such state, regardless of whether this Agreement is being executed by any of the parties hereto in other states or otherwise. The proper venue for any action concerning this Agreement shall be Boone County, Missouri.

c. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

d. Time. Time is of the essence in this Agreement. If the final day of any period which is set forth in this Agreement falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the state of Missouri, then in such event, the duration of such period shall be extended to the next day which is not a Saturday, Sunday, or other legal holiday. Any reference to a time of day (e.g., 12:00 noon) shall refer to the time of day in Columbia, Missouri.

e. Construction. The paragraph headings, captions, or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

f. Waiver. Except as otherwise specified herein, no waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

g. No Adverse Inference. This Agreement shall not be construed more strongly against one party or the other. The Parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

j. Entire Agreement: This Agreement sets forth all the promises, covenants, agreements, conditions, and understandings between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, expressed or implied, oral or written, except as herein contained. This Agreement may be modified only by an agreement in writing signed by the parties to this Agreement.

k. Notices: Any notice given or required to be given, unless otherwise provided, shall be in writing and shall be deemed to have been delivered, whether actually received or not, three (3) days after being deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or Developer, as the case may be, as shown below:

If To City:

Mike Matthes, City Manager
City of Columbia
701 East Broadway
Columbia, MO 65201

Copy to:

Fred Boeckman, City Counselor
City of Columbia
701 East Broadway
Columbia, MO 65201

If To Developer:

Walnut II LLC
College and Walnut, LLC
3301 Berrywood Drive, Suite 103
Columbia, MO 65201

Copy to:

Craig A. Van Matre
Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C.
1103 E. Broadway
P. O. Box 1017
Columbia, MO 65205-1017
Attorney for Developer

g. Subject to Appropriation. All obligations of City under this Transportation Contract that require the expenditure of funds are conditional upon the availability of funds budgeted and appropriated for that purpose.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
– SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first above written.

The City of Columbia, Missouri, ("City")

By: _____
Mike Matthes, City Manager

Attest:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Fred Boeckman, City Attorney

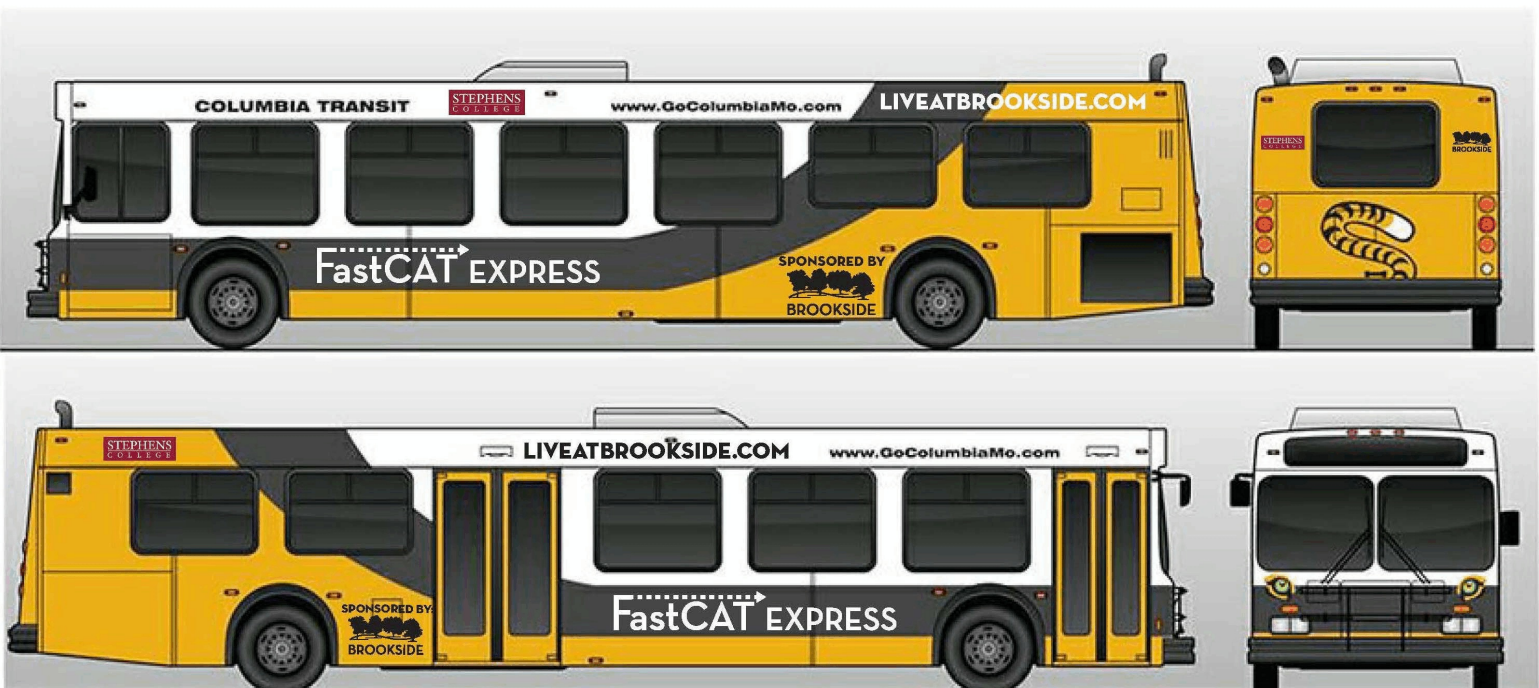
Walnut II LLC, a Missouri limited liability company,
("Developer")

By: _____
Name: _____
Title: _____

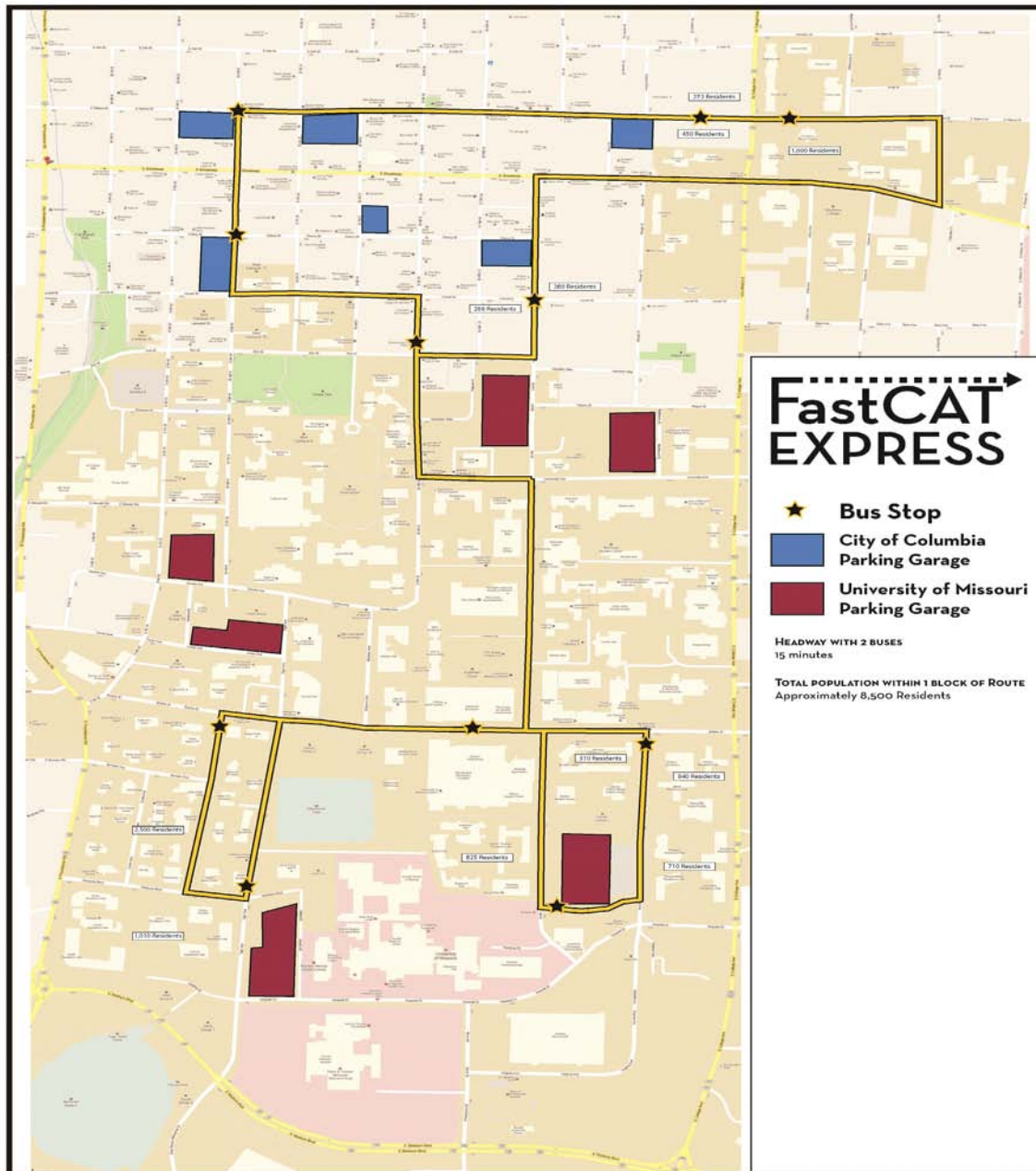
College and Walnut, LLC, a Missouri limited liability
company, ("Developer")

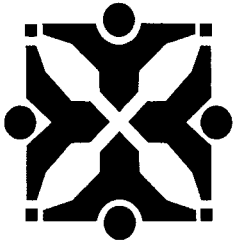
By: _____
Name: _____
Title: _____

Depiction of FastCAT Express Bus



Depiction of FastCAT Express Route





Source: Law

TB

Agenda Item No:

To: City Council
From: City Manager and Staff

MM

Council Meeting Date: Jun 4, 2012

Re: FastCAT Express Bus Transit Agreement

EXECUTIVE SUMMARY:

A council bill has been prepared for council consideration that would authorize an agreement with Walnut II LLC and College and Walnut, LLC pertaining to a FastCAT bus route serving the downtown/campus area.

DISCUSSION:

Under the proposed agreement, the City would operate a bus service route in the downtown/campus area and the Developer of the student apartment complex being constructed on the north side of Walnut Street at College Avenue and the Developer of the nearby proposed student apartment complex on the south side of Walnut Street (subject to a portion of the property being rezoned) would purchase student passes for their residents to ride on the new route.

The Developers would purchase semester passes at the following rates:

Individual pass	\$100.00
Bulk purchases between 20 and 999 . . .	\$ 62.50 per pass
Bulk purchases over 1, 000	\$ 50.00

The Developers would also pay a \$10,000.00 per year sponsorship.

The City would utilize at least two substantially identical buses to operate on the FastCAT bus route. The route would begin operation on August 15. Each pick-up site on the route would be visited by a bus no less than every 15 minutes during the first year and no less than every 10 minutes in subsequent years. The buses would operate six days a week from 7:30 a.m. until 5:00 p.m. on Monday, Tuesday and Wednesday and from 7:30 a.m. until 7:30 p.m. and then (one bus only) from 9:45 p.m. until 1:45 a.m. on Thursday, Friday and Saturday.

The agreement is for a five year term and would be renewed for successive additional one year terms unless notice of termination is given.

Each bus would be equipped with a GPS locator and a television set tuned to ESPN.

FISCAL IMPACT:

Unknown.

VISION IMPACT:

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

13.2 Goal: Columbia will have diverse travel options that allow for safe and efficient travel to and through destination points. Travel options will be compatible with adjacent land uses and coordinated with the transportation timing needs of the community.

SUGGESTED COUNCIL ACTIONS:

Passage of the council bill.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?		Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	13.2
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	