

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of July, 2022, by and between ***CITY OF JACKSON, MISSOURI, a municipal corporation***, hereinafter referred to as “**City**,” and ***Beussink Family Trust***, hereinafter referred to as “**Beussink**,” **WITNESSETH:**

WHEREAS, Beussink owns property located at 300 East Jefferson Street within the City;
and

WHEREAS, Beussink has a failing railroad tie retaining wall extending perpendicularly into the public right of way as shown in Exhibit A; and

WHEREAS, Beussink desires to replace this wall with a stacked landscape block wall;
and

WHEREAS, the City has no immediate plans for additional use of said public right-of-way; and

WHEREAS, the City reserves the right to use said public right-of-way for utility, roadway, sidewalk, and other purposes deemed appropriate by the City.

WHEREAS, the City desires to cooperate with Beussink to allow replacement of the wall in the same location; and

WHEREAS, the parties have reached certain agreements concerning the aforesaid project and desire to memorialize the agreement between them in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed as follows:

1. The City grants Beussink a limited right to use the East Jefferson Street public right-of-way adjacent to its property for a retaining wall perpendicular to the public right-of-way that extends to the street curb.

2. The City reserves the right to require termination of this permissive use upon action by the Board of Aldermen of the City of Jackson, at such time as the City or other public utility needs access to this public right-of-way.

3. Beussink acknowledges and agrees that the City may require Beussink to remove the retaining wall within the public right-of-way at Beussink's cost, at any time that the City determines any utility, roadway, sidewalk, or other project is to be built on said public right-of-way. Beussink further acknowledges and agrees that upon receipt of written notice from the City to remove that portion of the retaining wall from the public right-of-way, Beussink will do so within thirty (30) days.

4. Beussink agrees to obtain the required building permit and inspections for demolition and reconstruction of the wall and to pay all associated fees related to said permits and inspections.

5. The City assumes no liability related to Beussink's private retaining wall due to City work within the public right-of-way and shall incur no responsibility for maintenance, repair, or replacement of damaged wall components, subgrade, drainage structures, or other improvement.

6. The value of the public right-of-way has not been determined by a professional appraisal and has not been surveyed by either Beussink or the City.

7. The City shall not be held responsible for any loss, damage or injury incurred by any party associated with the private retaining wall in the public right-of-way.

8. Nothing set forth herein shall be construed as an abandonment by the City of the East Jefferson Street public right-of-way.

9. This Memorandum of Understanding contains the entire agreement of the parties and can be altered, amended, or modified only by written instrument executed by both parties. This Memorandum of Understanding sets forth the entire agreement between the parties and no custom, act, forbearance, or words or silence at any time, gratuitous or otherwise, shall impose any additional obligation or liability upon either party or waive or release either party from any default or the performance or fulfillment of any obligation or liability or operate as against either party as a supplement, alteration, amendment, or change of any terms or provisions set forth herein unless set forth in a written instrument duly executed by such party. The failure of either party to exercise any rights or remedies shall not release the other party from its obligations hereunder.

10. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of Missouri.

11. This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the undersigned parties and their respective heirs, legal representatives, distributees, successors, and assigns.

12. In case any one or more of the provisions contained in this Memorandum of Understanding shall for any reason be held invalid, illegal, or unenforceable in any respects, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Memorandum of Understanding shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. The rights and remedies provided by this Memorandum of Understanding are cumulative and the use of any one right or remedy by either party shall not preclude or waive its

right to use any or all other available remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year first above written.

CITY:

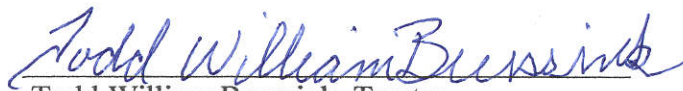
CITY OF JACKSON, MISSOURI

Dwain Hahs, Mayor


ATTEST:

Liza Walker, City Clerk

BEUSSINK FAMILY TRUST:



Todd William Beussink, Trustee



Mary Ann Beussink, Trustee