

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of January, 2025, by and between ***CITY OF JACKSON, MISSOURI, a municipal corporation***, hereinafter referred to as “**City**,” and ***Lori Evans***, hereinafter referred to as “**Evans**”,
WITNESSETH:

WHEREAS, Evans owns property located at 303 N. Georgia Street within the City as shown on Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, Evans has a railroad tie retaining wall extending into the public right-of-way;
and

WHEREAS, Evans desires to continue to use and maintain this retaining wall; and

WHEREAS, the City has no immediate plans for the 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; and

WHEREAS, the City desires to cooperate to allow Evans to continue to use and maintain the retaining wall in its present location; and

WHEREAS, the parties have reached certain agreements concerning the retaining wall 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 Evans a limited permissive right to use the public right-of-way for the retaining wall as presently constructed and as shown on Exhibit B which is attached hereto and made a part hereof.

2. The City reserves the right to terminate this limited permissive use for any reason whatsoever. Evans 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, Evans will do so within thirty (30) days at her sole cost.

3. The City assumes no liability related to Evans' private retaining wall 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 improvements.

4. 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.

5. To the fullest extent permitted by law, Evans agrees to indemnify, defend and hold harmless the City, its officers, agents, volunteers, lessees, invitees, and employees from and against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or alternative dispute resolution costs arising out of, or related to the use of the City's public right-of-way for the private retaining wall involving an injury to a person or persons, whether bodily injury or other personal injury (including death), or damage to property (including loss of use or diminution in value), but only to the extent that such suits, claims, damages, losses, or expenses are caused by the negligence or other wrongdoing of Evans, her agents, volunteers, or anyone directly or indirectly employed or hired by Evans or anyone for whose acts Evans may be liable, regardless of whether caused in part by the negligence or wrongdoing of City and any of its agents or employees.

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

7. Nothing set forth herein shall be construed as an abandonment by the City of the public right-of-way.

8. 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.

9. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of Missouri and the venue for any dispute between the parties shall be in the Circuit Court of Cape Girardeau County, Missouri.

10. 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.

11. 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.

12. 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 OF JACKSON, MISSOURI

Dwain Hahs, Mayor

ATTEST:

Angela Birk, City Clerk

Lori Evans