

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of _____, 2022, by and between **CITY OF JACKSON, MISSOURI, a municipal corporation**, hereinafter referred to as "**City**," and **Foster Their Voice, LLC**, hereinafter referred to as "**Foster**," **WITNESSETH:**

WHEREAS, Foster owns property located at 661 West Independence Street, also known as Lot 19 of Parkwood Place Subdivision within the City; and

WHEREAS, Foster has a portable metal carport structure and a failing three (3) foot tall railroad tie retaining wall extending parallel and perpendicularly in a fifteen (15) foot wide utility and sewer easement as shown in Exhibit A; and

WHEREAS, the previous owner did not obtain the required permits and inspections for these structures; and

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

WHEREAS, the City has existing sewer and electric lines in said public sewer and utility easement and the City has no immediate plans for additional use of said easement; and

WHEREAS, the City reserves the right to use said public sewer and utility easement for sewer and utility purposes deemed appropriate by the City.

WHEREAS, the City desires to cooperate with Foster 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 Foster a limited right to use the public sewer and utility easement for a retaining wall upon, across, parallel, and perpendicular to the public easement in the same location as the existing retaining wall.

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 sewer and utility easement or install additional public utilities.

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

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

5. The City assumes no liability related to Foster's private retaining wall due to City work within the public easement 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 easement has not been determined by a professional appraisal and has not been surveyed by either Foster 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 easement.

8. Foster agrees to expose the existing buried manhole in the public easement and alter the landscape in a manner that maintains its visibility.

9. Nothing set forth herein shall be construed as an abandonment by the City of the public sewer and utility easement or its public utilities.

10. 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.

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

12. 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.

13. 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.

14. 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.

15. This City and Foster agree that this Memorandum of Understanding, and amendments, modifications and additions, shall be recorded in the Cape Girardeau County Recorder of Deed's Office.

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:

Liza Walker, City Clerk

FOSTER THEIR VOICE, LLC:

Jacob Partridge, Manager

Jennifer Partridge, Manager

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