

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF JACKSON, MISSOURI, TO EXECUTE A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF JACKSON, MISSOURI, AND *PATRICIA LOUISE MATTHEWS OF JACKSON, MISSOURI*, RELATIVE TO THE *KIMBELAND LIFT STATON IMPROVEMENT PROJECT*; FURTHER SAID ORDINANCE SHALL AUTHORIZE AND DIRECT THE CITY CLERK TO ATTEST THE SIGNATURE OF THE MAYOR.

WHEREAS, the Mayor and Board of Aldermen have been presented a contract marked Exhibit A and attached hereto and incorporated herein as if fully set forth; and

WHEREAS, the Mayor and Board of Aldermen of the City of Jackson, Missouri, deem it advisable to enter into said contract.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF JACKSON, MISSOURI, AS FOLLOW:

Section 1. That the Mayor and Board of Aldermen of the City of Jackson, Missouri, approve the contract marked Exhibit A and attached hereto and incorporated herein as if fully set forth between the City of Jackson, a municipal corporation, and **Patricia Louise Matthews of Jackson, Missouri**. It is the belief of the Mayor and Board of Aldermen, that it is in the best interest of the citizens of the City of Jackson, Missouri, that the City enters into said contract.

Section 2. That the Mayor is hereby authorized and directed to execute said contract for and on behalf of the City of Jackson, Missouri.

Section 3. That the City Clerk of the City of Jackson is hereby authorized and directed to attest to the signature of the Mayor on the attached contract.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such

portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5. That this Ordinance shall take effect and be in force from and after its passage and approval.

FIRST READING: September 8, 2021.

SECOND READING: September 8, 2021.

PASSED AND APPROVED this 8th day of September, 2021, by a vote of 7 ayes, 0 nays, 1 abstention and 0 absent.

CITY OF JACKSON, MISSOURI

(SEAL)

ATTEST:

BY:

Dave Reminger
Mayor Pro Tem

Kimberly Wa
City Clerk

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 8th day of September, 2021, by and between **CITY OF JACKSON, MISSOURI**, a municipal corporation, hereinafter referred to as “City,” and **PATRICIA LOUISE MATTHEWS**, formerly known as *Patricia L. Smith*, hereinafter referred to as “Property Owner,” WITNESSETH:

WHEREAS, Patricia Louise Matthews is the owner of real estate located in Jackson, Missouri, commonly known as 1525 Kimbeland Drive, more particularly described as follows:

Lot 15 of Country Club Place in Section 18, Township 31 North, Range 13 East of the Fifth Principal Meridian in the City of Jackson, Cape Girardeau County, Missouri.

and

WHEREAS, the City desires to complete the project known as the Kimbeland Lift Station Improvement Project, hereinafter referred to as the “**Project**,” which includes the removal of a lift station and access road leading to the lift station, both of which are located on Property Owner’s real estate, all in accordance with the engineering plans on file in the office of the City Engineer for the City (hereinafter referred to as the “**Project Plans**.”)

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

1. **EXECUTION OF UTILITY EASEMENT DEED OF DEDICATION.**

Concurrently with the execution of this Memorandum of Understanding, the Property Owner hereby executes the Utility Easement Deed of Dedication granting a permanent utility easement and

a temporary construction easement to the City. Said Utility Easement Deed of Dedication is attached hereto as **Exhibit A**.

2. **REMOVAL OF ACCESS ROAD/PRESERVATION OF LANDSCAPING.**

The City has built a gravel access road across Property Owner's real estate as a means of access to the lift station. The City shall remove the access road from the Property Owner's real estate in accordance with the Project Plans and shall no longer use the Property Owner's real estate as a means of access to the utility easements located at the back of Property Owner's real estate except with the express permission of the Property Owner. The City shall take all reasonable steps necessary to preserve the existing landscaping on the Property Owner's real estate during the Project. Any damage, destruction, or alteration of the landscaping done during any construction or maintenance work on Property Owner's real estate as part of the Project shall be repaired by the City. In connection with the above, the City specifically agrees to the following:

A. Wooden Privacy Fence in Temporary Construction Area. The wooden privacy fence located within the Temporary Construction Area near the back (south) of Property Owner's yard on the west side will not be removed. In the event it is necessary to remove the fence temporarily in order to remove the lift station or the access road, the fence will be put back up when the work is finished.

B. Landscaping Bed and Lighting in Back Near Creek. Within the Temporary Construction Area in the very back (south) of Property Owner's yard there is plant bed area lined with stone edging that contains bushes, plants, trees, and in-ground lighting. Further south of this area there are large boulders that line an embankment down to a creek. Nothing in this area is to be disturbed during the removal of the lift station or the removal of the access road leading to the lift station. The stone edging, in-ground lighting, and all bushes, plants and trees are to remain in place.

C. Removal of Stone Edging Along Driveway. On the east side of Property Owner's real estate there is a driveway and access road with stone edging along the eastern-most side. This stone edging is to be removed and stockpiled on Property Owner's real estate.

D. Shade Garden on West Side. On the west side of Property Owner's real estate there is a shade garden, complete with a walking path, water fountain, in-ground lighting, and a variety of shade plants. This part of Property Owner's real estate is not within the Temporary Construction Easement and should not be entered into or disturbed at any time or under any circumstances during the Project. Any and all contractors hired by the City must access the Project area only through the Temporary Construction Easement.

E. Grading, Addition of Top Soil and Type of Sod. The Project Plans call for the removal of all gravel in the areas where the lift station and access road to the lift station are located. After the gravel is removed, these areas are to be scarified, then graded so that they will drain towards the creek. Topsoil shall be added to bring the grade level even with the adjacent surfaces and sod shall be laid in all areas where the grass has been disturbed. Shade fescue sod shall be laid in the shady areas of the yard and Bermuda sod shall be laid in the sunny areas of the yard, to match the existing grasses in Property Owner's yard.

F. Bricked Mailbox Near Entrance and Trees Along Driveway. On the north side of Property Owner's real estate, near the entry to the driveway, there is a bricked mailbox and a large tree located within the City Street right-of-way that should not be disturbed during the Project. Additionally, there are three (3) crepe myrtle trees lining the driveway area in the back yard that should not be dug up or disturbed during the Project.

3. **REMOVAL OF LIFT STATION.** There has existed a lift station on the easement set out in the original Country Club Place subdivision plat. The City shall remove the lift station

from the Property Owner's real estate in accordance with the Project Plans and shall no longer use the Property Owner's real estate to maintain a lift station. All other city utilities existing at the time of this Memorandum of Understanding shall be allowed to remain where located unless moved by the City at its absolute discretion to a different easement location.

4. **DRIVEWAY REPAIR.** Property Owner has made a claim against the City for compensation due to trespass/inverse condemnation arising out of the City's use of, and damage to, Property Owner's driveway as a means of access to the lift station without the benefit of an easement, hereinafter referred to as Property Owner's "**Driveway Claim.**" The City disputes Property Owner's Driveway Claim and denies any liability whatsoever for the same. In order to avoid the cost and delay associated with litigation, the parties have agreed to settle and compromise the Driveway Claim. The Property Owner has obtained a construction estimate for the reconstruction of the Property Owner's driveway. The Property Owner has chosen the contractor and design for the driveway and the Property Owner is solely responsible for the reconstruction of the driveway and all appurtenances thereto. The City shall pay to Property Owner, and Property Owner shall accept from the City, the sum of \$14,234.00 for the reconstruction of the driveway in full settlement of the Driveway Claim. Upon execution of this Memorandum of Understanding and upon receipt of payment of the said \$14,234.00, Property Owner forever releases and discharges the City and its agents, servants, employees and assigns from any and all claims and demands which Property Owner now has or may hereafter have on account of or arising out of the Driveway Claim.

5. **CASH SETTLEMENT DAMAGES.** Property Owner has made a claim against the City for compensation due to trespass/inverse condemnation arising out of the City's use of Property Owner's real estate lying outside of any easement, and for damages and expenses incurred as a result thereof, hereinafter referred to as Property Owner's "**Compensation Claim.**" The City

disputes Property Owner's Compensation Claim and denies any liability whatsoever for the same. In order to avoid the cost and delay associated with litigation, the parties have agreed to settle and compromise the Compensation Claim. The City shall pay to Property Owner, and Property Owner shall accept from the City, the sum of \$15,000.00 in full settlement of the Compensation Claim. Upon execution of this Memorandum of Understanding and upon receipt of payment of the said \$15,000.00, Property Owner forever releases and discharges the City and its agents, servants, employees and assigns from any and all claims and demands which Property Owner now has or may hereafter have on account of or arising out of the Compensation Claim.

6. **SUCCESSOR OWNERS.** The Property Owner will make all potential buyers or future owners of her real estate aware of the terms and conditions contained herein (except that the dollar amounts paid to Property Owner may be kept confidential) and the agreements contained herein shall run with the real estate and shall bind future owners.

7. **ENTIRE AGREEMENT.** This Memorandum of Understanding contains the entire agreement of the parties hereto with respect to the subject matter hereof and can be altered, amended, or modified only by written instrument executed by all such 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 any party or waive or release any party from any default or the performance or fulfillment of any obligation or liability or operate as against any 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 any party to exercise any rights or remedies shall not release the other parties from their obligations hereunder.

8. **ALL OTHER AGREEMENTS SUPERSEDED.** Unless and until this Memorandum of Understanding is modified in writing by the parties, this Memorandum of Understanding shall supersede and take precedence over all other agreements or documents entered into by them, either mutually or separately.

9. **GOVERNED BY LAWS.** This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of Missouri.

10. **BINDING.** 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. **USE OF WORDS.** Words of any gender used in this Memorandum of Understanding shall be construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context requires otherwise.

12. **CAPTIONS.** Any captions used in the Memorandum of Understanding are for convenience only and shall not be deemed to amplify, modify, or limit the provisions hereof.

13. **ENFORCEABILITY.** 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. **RIGHTS AND REMEDIES.** The rights and remedies provided by this Memorandum of Understanding are cumulative and the use of any one right or remedy by any 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 hereto have hereunto set their hands and seals the day and year first above written.



ATTEST:

Liza Walker
Liza Walker, City Clerk

CITY:

CITY OF JACKSON, MISSOURI

By: *Dave Reminger MPT*
Dwain Hahs, Mayor

PROPERTY OWNER:

Patricia Louise Matthews
Patricia Louise Matthews
Formerly known as Patricia L. Smith

EXHIBIT A

TITLE OF DOCUMENT:	UTILITY EASEMENT DEED
DATE OF DOCUMENT:	August 30, 2021
GRANTOR:	PATRICIA LOUISE MATTHEWS, Formerly known as PATRICIA L. SMITH
GRANTORS MAILING ADDRESS:	1525 KIMBELAND DRIVE JACKSON, MISSOURI 63755
GRANTORS DEED RECORDING:	DOCUMENT NO. 2009-13265
GRANTEE:	CITY OF JACKSON, MISSOURI 101 COURT STREET JACKSON, MISSOURI 63755
PROPERTY ADDRESS:	1525 KIMBELAND DRIVE JACKSON, MISSOURI 63755
LEGAL DESCRIPTION OF EASEMENT:	SEE PAGES 1 & 2 OF DEED

DEED OF DEDICATION
UTILITY EASEMENT

THIS DEED, made and entered into this 30th day of August, 2021,
by and between **PATRICIA LOUISE MATTHEWS, formerly known as PATRICIA L. SMITH**, a single person, of the County of Cape Girardeau, State of Missouri, Grantor, and **THE CITY OF JACKSON, MISSOURI**, a Municipal Corporation, of the County of Cape Girardeau, State of Missouri, Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of One Dollar and Other Good and Valuable Consideration, paid by the said Grantee, the receipt of which is hereby acknowledged, does by these presents **GRANT** unto the said Grantee, **EASEMENTS** for the following purposes:

1. To construct, maintain, repair, replace, and operate general utilities and all city services of whatsoever kind, as well as appurtenances necessary for the operation thereof, across, under, in, and through the following described real estate situated in the County of Cape Girardeau and State of Missouri, to-wit:

PERMANENT UTILITY EASEMENT:

Part of Lot 15 of Country Club Place in Section 18, Township 31 North, Range 13 East of the Fifth Principal Meridian in the City of Jackson, Cape Girardeau County, Missouri, more particularly described as follows:

Commence at the Northwest corner of Lot 15 of Country Club Place; thence South 81 degrees 48 minutes 25 seconds East 130.16 feet to the West line of Kimbeland Drive; thence along said West line along a non-tangent curve to the left having a radius of 52.00 feet, chord bearing South 21 degrees 55 minutes 43 seconds East 52.19 feet for an arc length of 54.67 feet to the point of beginning; thence continue along said West line along a non-tangent curve to the left having a radius of 52.00 feet, chord bearing South 60 degrees 26 minutes 11 seconds East 15.17 feet for an arc length of 15.22 feet; thence leaving said West line, South 21 degrees 01 minutes 35 seconds West 144.34 feet; thence South 80 degrees 04 minutes 35 seconds West 87.15 feet; thence North 68 degrees 21 minutes 20 seconds East 95.21 feet; thence North 18 degrees 50 minutes 35 seconds East 60.20 feet; thence North 14 degrees 12 minutes 59 seconds East 67.20 feet to the point of beginning.

The herein described area contains 1,956 square feet, more or less, and is subject to all easements, rights of way, restrictions, and licenses affecting the same, either written or implied.

2. To remove a lift station and lift station access road and appurtenances related thereto over, upon, across, under, in, and through the following described real estate situated in the County of Cape Girardeau and State of Missouri, to-wit:

TEMPORARY CONSTRUCTION EASEMENT:

Part of Lot 15 of Country Club Place in Section 18, Township 31 North, Range 13 East of the Fifth Principal Meridian in the City of Jackson, Cape Girardeau

County, Missouri, more particularly described as follows:

Commence at the Northwest corner of Lot 15 of Country Club Place; thence South 81 degrees 48 minutes 25 seconds East 130.16 feet to the West line of Kimbeland Drive; thence along said West line along a non-tangent curve to the left having a radius of 52.00 feet, chord bearing South 21 degrees 55 minutes 43 seconds East 52.19 feet for an arc length of 54.67 feet to the point of beginning; thence leaving said West line, South 20 degrees 39 minutes 46 seconds West 25.14 feet; thence North 72 degrees 47 minutes 02 seconds West 18.54 feet; thence South 15 degrees 41 minutes 11 seconds West 36.07 feet; thence South 70 degrees 00 minutes 00 seconds East 15.38 feet; thence South 20 degrees 39 minutes 46 seconds West 53.44 feet; thence South 67 degrees 27 minutes 41 seconds West 72.13 feet; thence South 77 degrees 28 minutes 58 seconds West 31.75 feet; thence North 86 degrees 02 minutes 31 seconds West 9.89 feet; thence South 07 degrees 46 minutes 52 seconds West 20.18 feet; thence North 80 degrees 04 minutes 35 seconds East 114.07 feet; thence North 21 degrees 01 minutes 35 seconds East 144.34 feet to the West line of Kimbeland Drive; thence along said West line with a non-tangent curve to the right having a radius of 52.00 feet, chord bearing North 60 degrees 26 minutes 11 seconds West 15.17 feet for an arc length of 15.22 feet to the point of beginning.

The herein described area contains 5,074 square feet, more or less, and is subject to all easements, rights of way, restrictions, and licenses affecting the same, either written or implied.

SAID TEMPORARY CONSTRUCTION EASEMENT BEING NULL AND VOID UPON THE EARLIER OF COMPLETION OF CONSTRUCTION OR TWO YEARS AFTER THE DATE HEREOF.

TO HAVE AND TO HOLD the said **EASEMENT**, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to its successors and assigns forever.

IN CONSIDERATION OF THE FOREGOING, the parties mutually agree as follows:

1. Grantee agrees that the use hereby granted for the Permanent Utility Easement shall be limited exclusively to underground utility facilities and uses incidental thereto.

2. Grantee agrees that it will indemnify and hold Grantor harmless from all claims and actions at law and in equity which may arise out of, or as a consequence of negligence of Grantee, or its authorized agents, servants, employees or assigns, in maintaining, repairing and utilizing the easements granted hereunder.


3. Grantor hereby reserves the right to use the easement premises in any manner that will not prevent or interfere with the exercise by Grantee of the rights granted hereunder; provided, however, that Grantor shall not obstruct, or permit to be obstructed, the area located within the Temporary Construction Easement at any time during construction without the express prior written consent of Grantee.

4. Grantor agrees that Grantee may assign the rights granted to it hereunder to any

assignee who demonstrates sufficient competence and gives adequate assurances that any work to be performed pursuant to such assignment shall be conducted in a skillful manner, and that Grantor/owner's interest in the easement premises shall be protected to the same extent as hereunder.

5. Grantee agrees to restore the surface of the ground of the easement premises to the same condition in which it was in before the start of construction within the Temporary Construction Easement, or any future maintenance work within the Permanent Utility Easement, as near as practicable. Grantee acknowledges that a concrete driveway is located over the Permanent Utility Easement area and in the event any repairs are needed to the utility lines located underneath the driveway, Grantee shall be responsible for repairing any damage to the driveway necessitated as a result of such repair work.

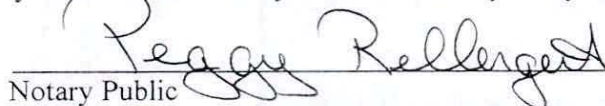
IN WITNESS WHEREOF, the said Grantor has executed these presents this 30th day of August, 2021.


Patricia Louise Matthews, f/k/a Patricia L. Smith

STATE OF MISSOURI)
) ss
COUNTY OF CAPE GIRARDEAU)

On this 30th day of August, 2021, before me, the undersigned notary public, personally appeared Patricia Louise Matthews, formerly known as Patricia L. Smith, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same as her free act and deed. She further declares herself to be single and unmarried.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and State the day and year first above written.


Notary Public

My term expires:

