

Introduced by: City Manager Nathan Mai-Lombardo

**AN ORDINANCE FOR THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED RIGHT OF ENTRY AGREEMENT TO THE U.S. ARMY CORPS OF ENGINEERS (USACE), ST. LOUIS DISTRICT, FOR FROST AVENUE, FROST INDUSTRIAL LANE, ROMISS COURT, JONAS PLACE, AND HAZELWOOD AVENUE**

**WHEREAS,** the U.S. Army Corps of Formally Utilized Sites Remediation Action Program (USACE FUSRAP), St. Louis District, in its continuing efforts to clear Coldwater Creek (CWC) and adjacent properties of contamination, pursuant to FUSRAP guidance, requests permission to perform tests and remediate any impacts to the City of Berkeley property(ies); and

**WHEREAS,** it is in the public interest that the USACE, St. Louis District, be given right of entry access for further investigation of areas along and within the Coldwater Creek 10-year flood plain.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

**Section 1.** The Mayor is hereby authorized to execute a Right of Entry agreement with the U.S. Army Corps of Engineers (USACE), St. Louis District, that grants the right to access the property located on Frost Avenue, Frost Industrial Lane, Romiss Court, Jonas Place, and Hazelwood Avenue, as depicted on Exhibit A.

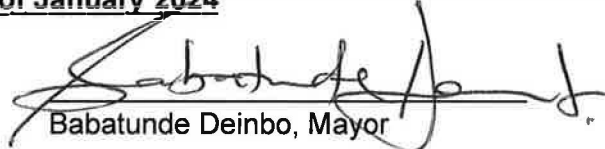
**Section 2.** The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

**Section 3.** This Ordinance shall be in full force and effect from and after the date of its passage.


1st Reading this 08<sup>th</sup> day of January 2024

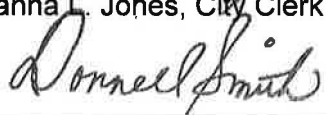
2nd Reading this 08<sup>th</sup> day of January 2024

3rd Reading, PASSED and APPROVED, this 22<sup>nd</sup> day of January 2024

  
Babatunde Deinbo, Mayor

ATTEST:

  
Deanna J. Jones, City Clerk

  
Donnell Smith, City Attorney

Approved as to Form:  
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman Williams	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilman Hoskins	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman Anthony	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilman Hindeleh	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman-at-Large Crawford-Graham	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Mayor Deinbo	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT  
1222 SPRUCE STREET  
ST. LOUIS, MISSOURI 63103-2833

REPLY TO  
ATTENTION OF:

Real Estate Division  
FUSRAP

December 12, 2023

Subject: Request for Right of Entry

City of Berkeley  
Attn: Mayor Deinbo  
8425 Airport Road  
Berkeley, MO 63134

Dear Mayor Deinbo,

Enclosed is a Right of Entry (ROE) request, when signed will grant the U.S. Army Corps of Engineers Formally Utilized Sites Remedial Action Program (USACE FUSRAP) the right to access portions of the Rights-of-Way of Frost Avenue, Frost Industrial Lane, Romiss Court, Jonas Place and Hazelwood Avenue being the highlighted area depicted on Exhibit A of the attached ROE. The purpose of the ROE is to perform surveys, investigations, collect samples, make test borings, and, if need be, remediate radiological and chemical contamination as detailed further in the attached documents.

Please complete and sign the attached ROE (notary not required) and Certificate of Authority to grant access to the USACE FUSRAP and return to me via mail or email at your earliest convenience:

US Army Corps of Engineers  
Attn: Real Estate Division (NWJ)  
1222 Spruce Street  
St. Louis, Missouri 63103

- or -

Nicholas.W.Jacobs@usace.army.mil

Upon receipt, the ROE will be signed on behalf of the government. If you have any questions or concerns, please contact Nicholas Jacobs via email listed above or via phone at 314-331-8167.

Sincerely,

*Nicholas W. Jacobs*

Nicholas W. Jacobs  
Realty Specialist  
St. Louis District, Real Estate Division

Enclosure

**DEPARTMENT OF THE ARMY  
RIGHT OF ENTRY**

Owner: City of Berkeley, Missouri

RE: Portions of the Rights-of-Way of Frost Avenue, Frost Industrial Lane, Romiss Court, Jonas Place and Hazelwood Avenue being the highlighted area on Exhibit "A"

See Exhibit "A"

The undersigned, hereinafter called the "Grantor," in consideration of the performance of remedial activities under the Formerly Utilized Sites Remedial Action Program (FUSRAP) by the UNITED STATES OF AMERICA, hereinafter called the "Government," hereby grants to the Government, its agents, employees, representatives, contractors, subcontractors, and assigns, an irrevocable right of entry upon the property described above located in St. Louis County, Missouri, and more particularly described in Exhibit "A" attached hereto, subject to the following terms and conditions:

1. This Right of Entry is granted for purposes of performing surveys and investigations, collecting samples and making test borings, and remediating radiological and chemical contamination of soils, groundwater and structures including, but not limited to, the right to store, move and remove equipment and supplies; excavate and dispose of contaminated soil and backfill with suitable soil and restore the property to its previous condition; construct, operate, maintain, repair, replace, and remove groundwater extraction, treatment and injection systems and monitoring wells; and perform such other work as may be necessary and incident to implementation of the Formerly Utilized Sites Remedial Action Program for a period not to exceed two (2) years beginning with date of this instrument.
2. This Right of Entry includes the right of ingress and egress on other lands of the Grantor provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.
3. All tools, equipment, and other property taken or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this Right of Entry.
4. The Government shall have the right to patrol and police the land during the period of this Right of Entry.
5. If any action of the Government in the exercise of the rights granted herein results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Grantor. In no event shall such repair or settlement exceed the fair market value of the fee simple title to the real property at the time immediately preceding such damage. The Government's liability under

this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. The provisions of this clause are without prejudice to any rights the Grantor may have to make a claim under applicable laws for any damages other than those provided for herein.

WITNESS MY HAND AND SEAL this 23<sup>rd</sup> day of January, 2024.

**City of Berkeley, Missouri**

Signature:



Printed Name: Babatunde Deinbo

Title: Mayor

Address: 8425 Airport Road  
Berkeley, MO 63134

E-mail: bdeinbo@berkeleymo.us  
cityclerk@berkeleymo.us

Phone Number: (314) 400-3756

**Accepted:**

UNITED STATES OF AMERICA

By: \_\_\_\_\_

Edwin Ramos  
Real Estate Contracting Officer  
Chief, Planning & Acquisition Branch  
Real Estate Division  
Saint Louis District  
United States Army Corps of Engineers

Date: \_\_\_\_\_

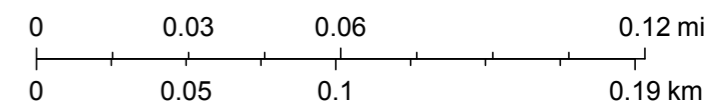


Exhibit "A"

Portions of the Rights-of-Way of Frost Avenue, Frost Industrial Lane, Romiss Court, Jonas Place and Hazelwood Avenue being the highlighted area below



1:2,400



St. Louis County GIS Service Center



CERTIFICATE OF AUTHORITY

I, Babatunde Deinbo \_\_\_\_\_ certify that I am the Mayor \_\_\_\_\_ of  
(Print Name) (Title)  
City of Berkeley, Missouri, named as “Owner” herein; that Babatunde Deinbo, who signed the  
ROE on behalf of the “Owner”, was then the Mayor; that said ROE was duly signed for and on  
behalf of the “Owner” by the authority of its governing body, and is within the scope of its  
delegated powers.

Signature: 

Printed Name: Babatunde Deinbo

Title: Mayor

Date: January 23, 2024