

Introduced by: Mayor Babatunde Deinbo

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE A RIGHT OF ENTRY AGREEMENT, TO THE U.S. ARMY CORPS OF ENGINEERS (USACE), ST. LOUIS DISTRICT, FOR BANSHEE ROAD**

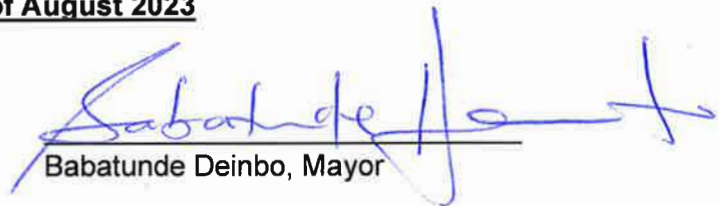
**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

- Section 1.** The Mayor is hereby authorized to execute a Right of Entry agreement with the U.S. Army Corps of Engineers Formally Utilized Sites Remedial Action Program (USACE FUSRAP) that grants the right to access the property located along Banshee Road as depicted on Exhibit A.
- Section 2.** The agreement is attached hereto and incorporated herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its date of passage.

1st Reading this 17<sup>th</sup> day of July 2023

2nd Reading this 17<sup>th</sup> day of July 2023

3rd Reading, PASSED and APPROVED, this 21<sup>st</sup> day of August 2023



Babatunde Deinbo, Mayor

ATTEST:



Deanna L. Jones, City Clerk



Approved as to Form:  
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Councilwoman Williams	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Councilman Hoskins	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Councilwoman Anthony	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Councilman Hindeleh	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Councilwoman-at-Large Crawford-Graham	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>
Mayor Deinbo	Aye <u>X</u> Nay <u>  </u> Absent <u>  </u> Abstain <u>  </u>



**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

April 19, 2023

Subject: Request for Right of Entry

City of Berkeley  
8425 Airport Road  
Berkeley, MO 63134

To Whom This May Concern,

Enclosed is a Right of Entry (ROE) form that when signed will grant the U.S. Army Corps of Engineers Formally Utilized Sites Remedial Action Program (USACE FUSRAP) the right to access the property located along Banshee Road as depicted on Exhibit A of the attached ROE. This ROE will give the USACE FUSRAP team the ability to access lands for the purpose of using this area as an alternate right of way for FUSRAP vehicles.

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 at Nicholas.W.Jacobs@usace.army.mil 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: Area along Banshee Road being that area highlighted on Exhibit "A" listed as being owned by the City of Berkeley

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 located at above address 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 ingress and egress for the 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**City of Berkeley, Missouri**

Signature:  Signature: \_\_\_\_\_

Printed Name: Babatunde Deinbo Printed Name: \_\_\_\_\_

Title: Mayor Title: \_\_\_\_\_

Address: 8425 Airport Road Address: \_\_\_\_\_  
Berkeley, MO 63134 \_\_\_\_\_

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

Phone Number: 314-400-3756 Phone Number: \_\_\_\_\_

**Accepted:**

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Melissa Lynn Hoerner  
Real Estate Contracting Officer  
Chief, Real Estate Division

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

