MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is effective on this _____ day of _____, 2015, by and between the **CITY OF JOPLIN** ("City") and **THE EMPIRE DISTRICT ELECTRIC COMPANY**, a Kansas corporation having its principle place of business in Joplin, Missouri, ("Empire") (each entity individually referred to herein as a "Party" and all entities collectively referred to herein as the "Parties").

RECITALS

WHEREAS, City desires to have constructed a road widening project on Zora Road in Joplin, Missouri, on an area running approximately 2,365 feet from Koch West dead end east to a designated point (the "Zora Project");

WHEREAS, various utility poles and utility lines owned and controlled by Empire will have to be relocated in order to make possible the Zora Project;

WHEREAS, Empire has agreed to deviate from its standard business procedures as an accommodation to City and to facilitate the Zora Project; and

WHEREAS, the Parties desire to enter into this MOU to set forth the Parties' general agreement as to each party's rights and obligations in connection with, and certain conditions to, establishing and constructing the Zora Project.

UNDERSTANDING

NOW, THEREFORE, in consideration of the mutual promises contained in this MOU and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

1. **Purpose.** The purpose of this MOU is to set forth in writing the Parties' understanding with regard to establishing and constructing the Zora Project, and to define the terms and conditions, and describe each party's rights and obligations, in connection therewith.

2. **Subject to Approval.** This Understanding is made, entered into, and executed by the Parties subject to review and the approval of the City Council ("Council").

3. **Empire's Obligations.** Empire will obtain only the easements necessary to provide Empire with adequate area to safely and efficiently relocate and maintain their utility lines and comply with the approved plans for the Zora Project. Empire will make every effort to relocate the existing utility lines into these easements within the projected construction schedule for the Zora Project; said schedule being to have the Zora Project begin on or about April 15, 2015. Empire will bear responsibility for 42.57% of the total costs associated with the obligations of obtaining the necessary easements and relocating the existing utility lines, and will invoice City for reimbursement of the remaining 57.43% of the total costs incurred for the easements and relocation of the existing utility lines in connection with the Zora Project. All

invoices shall be accompanied with documentation supporting the requested reimbursement.

4. **City's Obligations.** Within thirty (30) days after receipt of an invoice from Empire, City shall remit payment to Empire for 57.43% of the total costs incurred for the easements and relocation of utility lines in connection with the Zora Project.

5. **Mutual Recognition.**

a. Both parties recognize the need to minimize the cost associated with the relocation of these utility lines as both parties serve common customers. It is also recognized that the City, being a municipal corporation, is governed by strict fiscal controls that prohibit it from entering into open ended agreements that do not stipulate a maximum cost for services provided. Both parties anticipate the total cost of easement acquisition and utility line relocation should be less than $400,000.00 (Estimated Max. City Share = $229,720.00) and both parties will diligently work to keep the cost less than this amount. Recognizing that there are many variables and unknowns at this stage of a project of this type, it is unlikely, but possible, that costs could exceed this amount. Provided adequate documentation is presented to substantiate said increases, City Council authorizes the Maximum not-to-exceed cost of $275,000 for the City's share. Should the cost exceed this amount both parties recognize that additional action by the City Council of the City of Joplin will be necessary to appropriate additional funds for this work.

b. Both parties recognize that Empire has agreed to deviate from its standard business procedures to accommodate the City and to facilitate the Zora Project. Inclusive in this action, Empire has determined that it may not adhere to the strict requirement of having equal widths of easement on each side of their utility lines, especially where existing easement widths are such that adequate room is available to safely and properly maintain their facilities.

6. **Conditions.** Notwithstanding the foregoing understandings or anything to the contrary in this MOU, the parties agree that the terms and conditions herein, and the rights and obligations of the Parties herein, are predicated on the receipt of approval described in Section 2. In the event such approval is not obtained, the Parties agree to terminate this MOU and any related documents and agreements and to discontinue further actions in connection with the Zora Project.

7. **Miscellaneous.**

a. Modification. This MOU constitutes the complete and exclusive understanding of the Parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification, or amendment of any provision of this MOU will be effective only if in writing and signed by the Parties hereto.

b. Assignment. No Party may assign its rights or delegate its duties under this MOU (including by merger or other operation of law), either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any

attempted assignment or delegation without such consent will be void.

c. Notices. Any notices under this MOU must be in writing and sent by hand delivery, by certified mail, return receipt requested, or by overnight mail to the applicable Party at the address set forth below, or to such other address provided by a party from time to time. Such notice will be effective upon receipt.

To City:

Mr. Nick Heatherly
City of Joplin
602 S. Main
Joplin, Missouri 64801

To Empire:

Mr. Brent Baker
The Empire District Electric Company
602 S. Joplin Avenue
Joplin, Missouri 64801

d. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Missouri.

e. Counterparts; Delivery. This MOU may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party. This MOU may be signed and delivered by the email exchange of signed signatures pages, with the same force and effect as the exchange of original signatures.

f. Headings. The headings in this MOU are for convenience only and shall not in any way affect the interpretation or enforceability of this Agreement.

g. Severability. If any provision of this MOU is for any reason found to be unenforceable, it shall be modified to reflect the fullest enforceable intent of the Parties, or if such modification is not possible, it shall be severed, and the remainder of the MOU will continue in full force and effect.

<The rest of this page is intentionally left blank. Signature page follows.>

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the date first set forth above and each Party hereby represents and warrants that its respective signatory whose signature appears below has been and is fully authorized by all necessary and appropriate actions to execute this MOU.

CITY OF JOPLIN

By: _____

Name: _____

Title: _____

THE EMPIRE DISTRICT ELECTRIC COMPANY

By: _____

Name: _____

Title: _____