

City of Fayetteville Staff Review Form

2017-0214

Legistar File ID

5/2/2017

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Kit Williams

4/14/2017

City Attorney /
General Government Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Authorize Mayor Jordan to sign settlement agreement in condemnation cases for utility relocations associated with the Arkansas Highway Department I-49/Fulbright Expressway Inter-Change Project. Total payments to property owners in the amount of \$876,153.00.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? NA

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? NA

Item Cost

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Paul Becker, Chief Financial Officer

FROM: **Kit Williams**, City Attorney

DATE: **April 6, 2017**

RE: **Proposed Settlement of Condemnation Case to Secure Necessary
Property for Major Sewer Line**

When the Arkansas Highway and Transportation Department decided to make extensive and much needed improvements to the Highway 112, Interstate Highway 49 and Fulbright Expressway intersection, it needed to acquire large acreage from three properties south of this intersection from Neal Pendergraft-owned companies. The City of Fayetteville was informed that we were required to move our large sewer main which had adjoined the highway right-of-way, but now was in the way of the much-expanded highway. Initial negotiations by our Land Agents failed so the Fayetteville City Council authorized the City Attorney's Office to acquire possession of a general utility easement through eminent domain.

In early negotiations with the attorneys representing Neal Pendergraft, we agreed it would be best for their condemnation of a much larger parcel by the Highway Department be settled or tried to establish the most accurate value of the land that needed which adjoined the land being taken by the Highway Department. We later obtain possession (not ownership) after the Circuit Judge ordered that we pay \$500,000.00 into Court until a final valuation amount could be agreed to or a jury could value the property. With the City Council's permission, this amount was paid into the Court's registry.

Recently, Mr. Pendergraft and his attorneys worked out and agreed on a settlement with the Arkansas Highway Department which valued his property at \$8.06 per square foot for the highway right-of-way taking. This high valuation was probably influenced by the rezoning from Residential Agriculture to the far denser and more valuable Urban Thoroughfare granted by the City Council shortly before the highway improvement project began. Of major importance is the valuable location of this property adjoining the new I-49 intersection between Highway 112 and Gregg Street.

Fortunately, the vast majority of this general utility easement acquisition costs (over 87%) should be refunded to us by the Highway Department so the agreement to pay \$8.06 per square foot is a reasonable amount for us to recommend to the City Council. This will result in our payment of an additional \$376,153.00 to obtain deeds to our needed easement. Please see Pendergraft's attorney Woody Bassett's letter to me of April 5, 2017 explaining their settlement offer.

We have been informed by the Highway and Transportation Department that the Highway Department should refund 87.06% of this easement acquisition costs (copy of email attached). I compute this to be \$762,778.80 meaning that the City's final out-of-pocket costs would be \$113,374.20 for the necessary easement.

I recommend that the City Council approve and accept the settlement proposal for the three parcels of Neal Pendergraft's land pursuant to Woody Bassett's letter of April 5, 2017.

Williams, Kit

From: Pennington, Blake
Sent: Friday, April 14, 2017 9:33 AM
To: Williams, Kit
Subject: FW: BB0414 reimbursable agreement

--

Blake E. Pennington

Assistant City Attorney
Tele: (479) 575-8313
bpennington@fayetteville-ar.gov

From: Mashburn, Keith [<mailto:Keith.Mashburn@ahtd.AR.gov>]
Sent: Thursday, March 30, 2017 11:34 AM
To: Beavers, Jim <jbeavers@fayetteville-ar.gov>
Cc: Nyander, Tim <tnyander@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: RE: BB0414 reimbursable agreement

Jim,

The 87.06% reimbursable percentage will apply to easement costs, as with all the various categories on our agreement. Can you provide a current estimate of your easement costs for this project?

Thanks,

Keith Mashburn
AHTD Utility Coordinator
501.569.2142

From: Beavers, Jim [<mailto:jbeavers@fayetteville-ar.gov>]
Sent: Wednesday, March 29, 2017 7:29 AM
To: Mashburn, Keith
Cc: Nyander, Tim; Pennington, Blake
Subject: BB0414 reimbursable agreement

Keith,

As our City Attorney negotiates, or goes to trial with the Pendergraft property easements, I have been asked to verify the reimbursable percentage.

I understand that the 87.06% reimbursement also includes all land and easements required for BB0414 water and sewer relocations. Such totals and reimbursements are greater than the agreement and agreement change order that we have on file.

Please confirm.

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY CONSTRUCTION/RELOCATION AGREEMENT

State Job No BB0414 (Utilities) County Washington
Federal Aid Project BIM-STPF-B540(216) Route I-49 Section 28
Job Location Porter Rd. - Hwy. 112/71B Utility Owner City of Fayetteville
Widening & Intchng. Impvts. (F) Water and Sewer

THIS AGREEMENT, made and entered into this 16th day of June, 20 15, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas State Highway and Transportation Department, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department," and the **City of Fayetteville Water and Sewer of Fayetteville, Arkansas** acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

The Department proposes to make highway improvements as specified under the above referenced job number and the Owner will adjust or relocate its existing facilities as set out in the attached plans and cost estimate.

The Department will participate in the cost of said adjustment/relocation to the extent that eligibility is hereinafter established.

Payment will be made on **actual cost** basis as mutually agreed between Owner and Department.

This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 2010-146 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

DESCRIPTION OF WORK: **See Exhibit A on Page 4**

The Department agrees that the required adjustment is **87.06%** eligible for reimbursement for the **actual cost** which is estimated to be **\$2,210,993.75** of which **\$1,924,891.16** is to be paid by the Department and **\$286,102.59** is to be borne by Owner.

Owner will not commence work until authorized by the Department, and will then endeavor to begin within **150 calendar** days and complete within **180 calendar** days thereafter.

On completion of said work, Owner is responsible for the cleanup and restoration of the work area including the disposal of surplus materials and debris.

Final billing must include all supporting detail. Owner shall also submit one (1) set of as-built drawings at this time.

Payment will be 100% of lump sum bills and actual cost bills, at the discretion of the Department a 10% retainage can be withheld and released upon completion of an audit review. All final bills for utility relocation are subject to review and audit by state and/or federal auditors.

Expenses incurred under an actual cost agreement may be billed to the Department monthly in increments of \$5,000.00 or more.

Owner must maintain cost records and accounts to support the agreed adjustment/relocation work. Said records to be retained and available for inspection for a period of three (3) years from date of final payment.

Owner shall be responsible for any and all hazards to persons, property, and traffic.

With respect to traffic control, owner shall adhere to the requirements of the Manual of Uniform Traffic Control Devices as amended and supplemented.

To the extent applicable to this agreement, the Owner shall comply with the Buy America requirements (as specified in 23 U.S.C. 313 and 23 CFR 635.410). The Owner is not required to change its existing standards for materials as long as the Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or regulation of the Owner's facilities (as specified in 23 CFR 645) on contracts and agreements involving Federal-Aid Highway Program funding and precedence over regulations which allow the Owner to furnish materials from company stock (as specified on 23 CFR 645.117(e)). Company Stock materials that do not meet Buy America requirements may not be permanently incorporated into a Federal-Aid Highway Program funded project. The Owner must provide a definitive statement that all products permanently incorporated into the project are covered under the Buy America requirements. This requirement is fulfilled via proper signature and submission of the statement of charges form. In some circumstances, a waiver of the Buy America requirements may be granted by the Federal Highway Administration, to be determined on a project-by-project basis.

Owner shall be responsible for and shall hold harmless the Arkansas State Highway Commission, the Department and their officers and employees from any and all claims, actions, causes of action, suits, damages, losses or liability whatsoever, arising out of Owner's performance of the work subject to this Agreement.

Notwithstanding anything hereinbefore written, neither the Owner nor the Department by execution of this Agreement waives or relinquishes any rights which either may legally have within the limits of the Law or Constitution, either State or Federal.

City of Fayetteville
Water and Sewer

ARKANSAS HIGHWAY COMMISSION
Acting By and Through The
ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

TIM NYANDER

Name (Typed or Printed)

DIRECTOR OF UTILITIES

Title



Signature

71-6018462

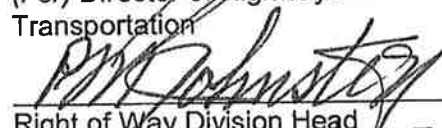
FEDERAL TAXPAYER IDENTIFICATION #

Name (Typed or Printed)

Title

Signature


(For) Director of Highways &
Transportation


Right of Way Division Head


Section Head-Utilities Section

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ATTORNEYS AT LAW
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FAYETTEVILLE, ARKANSAS 72702-3618

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CURTIS L. NEBBEN +
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*ALSO LICENSED
IN OKLAHOMA

+ALSO LICENSED
IN MISSOURI

April 5, 2017

Re: City of Fayetteville, Arkansas vs.
Drake Street Property, LLC, et al
Case No. CV-2016-2151-4

Mr. Kit Williams
Fayetteville City Attorney
City Administration Building
113 W. Mountain Street, Suite 302
Fayetteville, AR 72701

Dear Kit:

Our client, Neal Pendergraft, is a longtime resident and citizen of Fayetteville. As you know, John Everett, James Graves and I represent the Pendergraft family in connection with the above-referenced condemnation case filed by the City of Fayetteville against three LLC's owned by Mr. Pendergraft. The real property at issue is located on the east side of the Interstate 49/Garland Avenue/Fulbright Expressway interchange near the ongoing road work being done by the Arkansas Highway Department. You and Blake Pennington are completely familiar with the background and relevant facts of this case. The purpose of this letter is to express our interest in resolving this case as soon as possible and to convey to you and other city officials our settlement demand.

You are aware that Mr. Pendergraft recently settled all three condemnation cases involving his property which had been filed by the Arkansas State Highway Commission and we have already provided you and Blake with a file-marked copy of the Consent Judgment in each of those cases. The three cases were settled for an average of \$8.06 per square foot for the property taken. That

Mr. Kit Williams
April 5, 2017
Page 2

number is arrived at by lumping in the damage to the remainder with the value of the property taken.

Our settlement demand is simple and straightforward. Mr. Pendergraft has authorized us to offer to settle this case with the City for \$8.06 per square foot which is the same average square foot value the Highway Commission paid to resolve its three condemnation cases against the LLC's owned by Mr. Pendergraft. According to our math, the total amount of property being taken by the City of Fayetteville in fee simple title is 108,704 square feet which at \$8.06 per square foot totals \$876,153. The City has already paid in \$500,000 earlier in the case so we are demanding that the City pay the additional sum of \$376,153 to our client to fully resolve this matter and conclude the litigation.

We are prepared to commence further discovery and get this case ready for trial but our preference is to settle it in the manner outlined above. We trust the City will agree that what we have proposed is fair, reasonable and sensible for all concerned. We will await the City's response to our offer. In the event you have any questions or need additional information, please contact either me or John Everett.

Sincerely,

BASSETT LAW FIRM LLP



Woody Bassett

WB:sg

cc: John Everett
James Graves
Neal Pendergraft

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

CITY OF FAYETTEVILLE, ARKANSAS,
an Arkansas municipal corporation

PLAINTIFF

v.

Case No. CV-2016-2151-4

**DRAKE ST PROPERTY, LLC;
1155 PROPERTIES, LLC;
RPM1 PROPERTIES-FAYETTEVILLE, LLC
A/K/A RPM1 PROPERTIES, LLC;
AND SIGNATURE BANK OF ARKANSAS**

DEFENDANTS

CONSENT ORDER AND JUDGMENT

Upon agreement of the Plaintiff, City of Fayetteville, Arkansas, an Arkansas municipal corporation, and Defendants Drake St Property, LLC; 1155 Properties, LLC; RPM1 Properties-Fayetteville, LLC a/k/a RPM1 Properties, LLC, the Court finds and orders as follows:

1. Plaintiff, City of Fayetteville, is an Arkansas municipal corporation duly-organized under the laws of the State of Arkansas and is a city of the first class situated in Washington County, Arkansas.
2. Defendants, Drake St Property, LLC, 1155 Properties, LLC and RPM1 Properties-Fayetteville, LLC a/k/a RPM1 Properties, LLC are the owners of real property located on the east side of the Interstate 49/Garland Avenue/Fulbright Expressway interchange in the City of Fayetteville, Washington County, Arkansas.
3. Defendant Signature Bank of Arkansas was named as a defendant because of its potential interest in the real property owned by Drake St Property, LLC by virtue of a mortgage filed for record in the Office of the Circuit Clerk and Ex-Officio Recorder for Washington County, Arkansas on June 24, 2013, as Document No. 2013-00021051. Signature Bank was served on

November 29, 2016 but has not filed an answer in this action and is in default; however, no relief is sought against Signature Bank, nor is any relief granted.

4. By virtue of the provisions of Ark. Code Ann. § 18-15-301, *et seq.* Plaintiff is granted the power of eminent domain to enter upon, take and condemn private property for lawful purposes.

5. Jurisdiction and venue lie properly before this Court.

6. The real property sought from the Defendants in this action is required for the relocation, construction, maintenance, repair and/or replacement of water and sewer pipelines and are necessary to allow the State of Arkansas to construct the Interstate 49/Garland Avenue/Fulbright Expressway interchange project in Fayetteville, Arkansas, a lawful public purpose.

7. The City of Fayetteville seeks and Drake St Property, LLC agrees to grant a general utility easement on real property owned by Defendant, Drake St Property, LLC, which is legally described as follows:

A part of the SE¼ of the NE¼ of Section 33, and a part of the SW¼ of the NW¼ of Section 34, all within Township 17 North, Range 30 West, and Washington County, Arkansas: Commencing at the Southwest corner of the NW¼ of said Section 34; thence N02°27'51"E a distance of 1247.42 feet along the West line of said SW¼ of the NW¼ of Section 34 to the POINT OF BEGINNING; thence S88°37'16"W a distance of 1.49 feet; thence N78°02'42"W a distance of 196.06 feet; thence S79°36'29"W a distance of 80.30 feet; thence S66°16'50"W a distance of 11.28 feet to the West property line as described in File 2013-00021050; thence N02°30'44"E a distance of 33.44 feet along said West property line to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way N79°36'29"E a distance of 89.73 feet; thence S78°02'42"E a distance of 198.48 feet; thence N88°37'16"E a distance of 209.73 feet to the East line of said property; thence along said East property line S02°27'41"W a distance of 30.16 feet; thence leaving said East property line N81°40'58"W a distance of 0.53 feet; thence S88°37'16"W a distance of 209.20 feet to the POINT OF BEGINNING, containing 14,952 square feet or 0.34 acres, more or less.

8. The City of Fayetteville seeks and 1155 Properties, LLC agrees to grant a general

utility easement on real property owned by Defendant, 1155 Properties, LLC, which is legally described as follows:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E 209.32 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2004-00000965; thence along said West property line N02°27'41"E 1261.87 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°27'41"E 30.16 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way S81°40'58"E 149.89 feet; thence S77°47'17"E 249.00 feet to the East line of said property; thence along said East property line S02°31'22"W 30.43 feet; thence leaving said East property line N77°47'17"W 253.10 feet; thence N81°40'58"W 145.80 feet to the POINT OF BEGINNING, containing 11,967 square feet or 0.27 acres, more or less.

ALSO:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E a distance of 602.51 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2004-00000965; thence along said West property line N02°31'22"E 1205.05 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°31'22"E 30.43 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S77°47'17"E 8.10 feet, S66°50'23"E 302.08 feet, S87°06'30"E 77.97 feet to the East line of said property; thence along said East property line S02°29'38"W 30.00 feet; thence leaving said East property line N87°06'30"W 83.54 feet; thence N66°50'23"W 304.56 feet; thence N77°47'17"W 0.11 feet to the POINT OF BEGINNING, containing 11,646 square feet or 0.27 acres, more or less.

9. The City of Fayetteville seeks and RPM1 Properties-Fayetteville, LLC a/k/a RPM1

Properties, LLC agrees to grant a general utility easement on real property owned by Defendant, RPM1 Properties-Fayetteville, LLC a/k/a RPM1 Properties, LLC, which is legally described as follows:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas. Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E a distance of 971.73 feet along the South line of said SW $\frac{1}{4}$ of the

NW ¼ to the West property line as described in File 2013-00000127; thence along said West property line N02°29'38"E a distance of 1097.61 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°29'38"E a distance of 30.00 feet to a point on the Easterly right-of-way for Interstate 49 as shown on Arkansas Highway Transportation Department plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S87°06'30"E a distance of 127.05 feet, N79°28'03"E a distance of 223.05 feet, N72°16'47"E a distance of 102.47 feet, N53°49'31"E a distance of 170.40 feet, N43°18'52"E a distance of 123.92 feet, N51°32'44"E a distance of 273.79 feet, N55°05'30"E a distance of 138.50 feet, N49°44'01"E a distance of 140.32 feet, N39°02'57"E a distance of 211.18 feet; thence leaving said Easterly right of way N38°31'42"E a distance of 243.33 feet; thence N20°15'19"E a distance of 195.51 feet to said Easterly right of way; thence along said Easterly right-of-way the following courses: N34°35'25"E a distance of 160.58 feet, N43°06'54"E a distance of 89.59 feet to a point on the South line of an existing 25 foot Water & Sewer easement described in Book 1045 Page 115; thence along said South line of an existing 25 foot Water & Sewer easement N69°01'00"E a distance of 68.68 feet; thence leaving said South line of an existing 25 foot Water & Sewer easement S43°06'54"W a distance of 149.13 feet; thence S34°35'25"W a distance of 154.57 feet; thence S20°15'19"W a distance of 196.57 feet; thence S38°31'32"W a distance of 247.05 feet; thence S39°02'57"W a distance of 215.37 feet; thence S49°44'01"W a distance of 144.53 feet; thence S55°05'30"W a distance of 138.98 feet; thence S51°32'44"W a distance of 114.91 feet; thence S45°15'53"W a distance of 45.70 feet; thence S51°32'44"W a distance of 110.00 feet; thence S43°18'52"W a distance of 124.62 feet; thence S53°49'31"W a distance of 179.30 feet; thence S72°16'47"W a distance of 110.04 feet; thence S86°17'59"W a distance of 41.70 feet; thence S79°28'03"W a distance of 187.69 feet; thence N87°06'30"W a distance of 130.37 feet to the POINT OF BEGINNING, containing 70,139 square feet or 1.61 acres, more or less.

10. The real property described in paragraphs 7, 8, and 9 is wholly located within Washington County, Arkansas, and needed by the City of Fayetteville, Arkansas for the relocation of utilities necessary to allow the State of Arkansas to construct the Interstate 49/Garland Avenue/Fulbright Expressway Interchange project.

11. The total amount of property being taken as general utility easements by the City of Fayetteville is 108,704 square feet. The parties agree that the value of the property being taken is \$8.06 per square foot and the total value of the property being taken by the City is \$876,153.00.

12. The total amount of \$500,000 was previously deposited into the Registry of the Court for the payment of estimated just compensation pursuant to an order of the Circuit Court on

November 15, 2016, so that the Plaintiff could enter upon and take possession of the lands described above for its utility relocation project.

13. Therefore, Plaintiff is ordered to deposit the additional sum of \$376,153.00 in the registry of the Court within fourteen days of the entry of this order.

14. The Clerk of the Court is hereby ordered and directed to disburse the additional funds deposited in this case, in full and final satisfaction of this Judgment, to the Defendant property owners in care of their attorney, John Everett, at Everett, Wales & Comstock, 1944 E. Joyce Boulevard, Fayetteville, Arkansas 72703-5162.

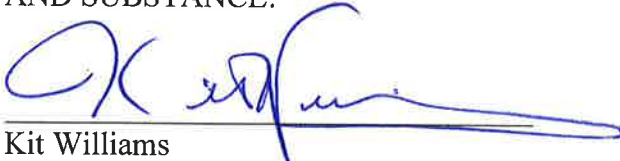
15. It is further ordered that the Properties shall execute general utility easement deeds for the lands described in paragraphs 7, 8 and 9 above in favor of the Plaintiff, City of Fayetteville within fourteen days of the City's payment to the registry of the Court.

IT IS SO ORDERED.

HONORABLE DOUG MARTIN
CIRCUIT JUDGE


DATE: _____

APPROVED AS TO FORM
AND SUBSTANCE:



Kit Williams

Fayetteville City Attorney
113 W. Mountain St., Suite 302
Fayetteville, Arkansas 72704



Woody Bassett
Attorney for 1155 Properties, LLC,
Drake St Property, LLC, and RPM1 Properties, LLC
P.O. Box 3618
Fayetteville, Arkansas 72702

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

CITY OF FAYETTEVILLE, ARKANSAS,
an Arkansas municipal corporation

PLAINTIFF

v.

Case No. CV-2016-2151-4

**DRAKE ST PROPERTY, LLC;
1155 PROPERTIES, LLC;
RPM1 PROPERTIES-FAYETTEVILLE, LLC
A/K/A RPM1 PROPERTIES, LLC;
AND SIGNATURE BANK OF ARKANSAS**

DEFENDANTS

SETTLEMENT AGREEMENT

WHEREAS, the Plaintiff, City of Fayetteville, Arkansas, an Arkansas municipal corporation, filed suit in this matter seeking condemnation of certain private property owned by Defendants Drake St Property, LLC; 1155 Properties, LLC; RPM1 Properties-Fayetteville, LLC a/k/a RPM1 Properties, LLC (hereinafter "Properties"); and

WHEREAS, the purpose of the taking is for the relocation, construction, maintenance, repair and/or replacement of water and sewer pipelines which were necessary to allow the State of Arkansas to move forward with construction of the Interstate 49/Garland Avenue/Fulbright Expressway interchange project in Fayetteville, Arkansas, a lawful public purpose.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Settlement Agreement and other good and valuable consideration, the Parties do hereby expressly agree as follows:

1. The City and Defendant Properties agree to submit a consent order and judgment to the Court confirming the details of this settlement agreement.

2. Defendant, Drake St Property, LLC shall execute the General Utility Easement deed attached hereto as Exhibit A conveying the interest set forth therein to the City of Fayetteville to certain property legally described as follows:

A part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 33, and a part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, all within Township 17 North, Range 30 West, and Washington County, Arkansas: Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence N02°27'51"E a distance of 1247.42 feet along the West line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34 to the POINT OF BEGINNING; thence S88°37'16"W a distance of 1.49 feet; thence N78°02'42"W a distance of 196.06 feet; thence S79°36'29"W a distance of 80.30 feet; thence S66°16'50"W a distance of 11.28 feet to the West property line as described in File 2013-00021050; thence N02°30'44"E a distance of 33.44 feet along said West property line to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way N79°36'29"E a distance of 89.73 feet; thence S78°02'42"E a distance of 198.48 feet; thence N88°37'16"E a distance of 209.73 feet to the East line of said property; thence along said East property line S02°27'41"W a distance of 30.16 feet; thence leaving said East property line N81°40'58"W a distance of 0.53 feet; thence S88°37'16"W a distance of 209.20 feet to the POINT OF BEGINNING, containing 14,952 square feet or 0.34 acres, more or less.

3. Defendant, 1155 Properties, LLC shall execute the General Utility Easement deed attached hereto as Exhibit B conveying the interest set forth therein to the City of Fayetteville to certain property legally described as follows:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E 209.32 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2004-00000965; thence along said West property line N02°27'41"E 1261.87 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°27'41"E 30.16 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way S81°40'58"E 149.89 feet; thence S77°47'17"E 249.00 feet to the East line of said property; thence along said East property line S02°31'22"W 30.43 feet; thence leaving said East property line N77°47'17"W 253.10 feet; thence N81°40'58"W 145.80 feet to the POINT OF BEGINNING, containing 11,967 square feet or 0.27 acres, more or less.

ALSO:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E a distance of 602.51 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2004-00000965; thence along said West property line N02°31'22"E 1205.05 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°31'22"E 30.43 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S77°47'17"E 8.10 feet, S66°50'23"E 302.08 feet, S87°06'30"E 77.97 feet to the East line of said property; thence along said East property line S02°29'38"W 30.00 feet; thence leaving said East property line N87°06'30"W 83.54 feet; thence N66°50'23"W 304.56 feet; thence N77°47'17"W 0.11 feet to the POINT OF BEGINNING, containing 11,646 square feet or 0.27 acres, more or less.

4. Defendant, RPM1 Properties-Fayetteville, LLC a/k/a RPM1 Properties, LLC shall execute the General Utility Easement deed attached hereto as Exhibit C conveying the interest set forth therein to the City of Fayetteville to certain property legally described as follows:

A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas. Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E a distance of 971.73 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2013-00000127; thence along said West property line N02°29'38"E a distance of 1097.61 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°29'38"E a distance of 30.00 feet to a point on the Easterly right-of-way for Interstate 49 as shown on Arkansas Highway Transportation Department plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S87°06'30"E a distance of 127.05 feet, N79°28'03"E a distance of 223.05 feet, N72°16'47"E a distance of 102.47 feet, N53°49'31"E a distance of 170.40 feet, N43°18'52"E a distance of 123.92 feet, N51°32'44"E a distance of 273.79 feet, N55°05'30"E a distance of 138.50 feet, N49°44'01"E a distance of 140.32 feet, N39°02'57"E a distance of 211.18 feet; thence leaving said Easterly right of way N38°31'42"E a distance of 243.33 feet; thence N20°15'19"E a distance of 195.51 feet to said Easterly right of way; thence along said Easterly right-of-way the following courses: N34°35'25"E a distance of 160.58 feet, N43°06'54"E a distance of 89.59 feet to a point on the South line of an existing 25 foot Water & Sewer easement described in Book 1045 Page 115; thence along said South line of an existing 25 foot Water & Sewer easement N69°01'00"E a distance of 68.68 feet; thence leaving said South line of an existing 25 foot Water & Sewer easement S43°06'54"W a distance of 149.13 feet; thence S34°35'25"W a distance of 154.57 feet; thence S20°15'19"W a distance of 196.57 feet; thence S38°31'32"W a distance of 247.05 feet; thence S39°02'57"W a distance of 215.37 feet; thence S49°44'01"W a distance of 144.53 feet; thence S55°05'30"W a distance of 138.98 feet; thence S51°32'44"W a distance of 114.91 feet; thence S45°15'53"W a distance of 45.70 feet; thence S51°32'44"W a distance of 110.00 feet; thence S43°18'52"W a distance of 124.62 feet; thence S53°49'31"W a distance of 179.30 feet; thence S72°16'47"W a distance of 110.04 feet; thence S86°17'59"W a distance of 41.70 feet; thence

S79°28'03"W a distance of 187.69 feet; thence N87°06'30"W a distance of 130.37 feet to the POINT OF BEGINNING, containing 70,139 square feet or 1.61 acres, more or less.

5. The total amount of property being taken as general utility easements by the City of Fayetteville pursuant to this Settlement Agreement is 108,704 square feet. The parties agree that the value of the property being taken is \$8.06 per square foot and the total value of the property being taken by the City is \$876,153.00.

6. The total amount of \$500,000.00 was previously deposited into the Registry of the Court for the payment of estimated just compensation pursuant to an order of the Court on November 15, 2016.

7. The City of Fayetteville agrees to deposit the additional sum of \$376,153.00 in the registry of the Court for disbursement to the Properties within fourteen days of the entry of the consent order.

8. The parties agree to present a Consent Order and Judgment to the Court confirming the terms of this agreement agree to forever release, acquit and discharge each other, their successors and assigns, from any and all possible actions, suits, damages, and liabilities of any kind or nature related to the acquisition of these general utility easements and the construction of the mains or other authorized facilities, as well as any attorney fees, costs, penalties or claims that the parties to this agreement may have.

9. The Properties agree to execute and deliver to the City the General Utility Easement deeds attached hereto within fourteen days of the City's deposit of the additional funds in the registry of the Court. The City agrees to pay the cost to record the deeds.

10. The parties expressly represent and warrant that the person signing this Settlement Agreement on behalf of that party has the authority and is legally empowered to sign this agreement and bind that party to the terms herein.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE, we sign

below:

**DRAKE ST PROPERTY, LLC
1155 PROPERTIES, LLC; AND
RPM1 PROPERTIES-FAYETTEVILLE,
LLC A/K/A RPM1 PROPERTIES, LLC**



NEAL PENDERGRAFT
Authorized Member

Date: APRIL 13, 2017

**CITY OF FAYETTEVILLE,
ARKANSAS**

LIONELD JORDAN, Mayor

Date: _____

ATTEST:

SONDRA SMITH, City Clerk-Treasurer

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Drake ST Property, LLC**, an Arkansas limited liability company, hereinafter called GRANTOR, for and in consideration of the sum of One Hundred Twenty Thousand Five Hundred Thirteen Dollars (\$120,513.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of roadway, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, and appurtenances thereto, on over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: Deed Ref: 2013-00021050

Part of the East half of the Northeast Quarter of Section 33 and a part of the West half of the Northwest Quarter of Section 34, all in Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows, to-wit: beginning at an existing rebar on the North right of way of Arkansas HWY #180 which is S89°56'45"E 209.48' and N00°02'53"W 36.49' from the Southwest corner of the Northwest Quarter of said Section 34 and running thence along said right of way the following: N89°48'32"W 382.99', N61°20'32"W 118.80', N39°12'43"W 10.05', thence leaving said right of way North 1252.08' to the Southern right of way of Interstate 540, thence along said Southern right of way N65°33'03"E 111.21', thence continuing along said right of way N66°45'20"E 425.61', thence leaving said right of way S00°02'53"E 1532.12' to the point of beginning, containing 16.05 acres, more or less.

Subject to all easements and rights of way of record. LESS AND EXCEPT: Part of the East Half of the Northeast Quarter of Section 33 and part of the West Half of the Northwest Quarter of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Commencing at a Half Inch Rebar found at the Quarter Corner of said Sections 33 and 34; thence North 02°27'51" East along the East Line of said Section 33 a distance of 1277.49 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job BB0414 for the POINT OF BEGINNING; thence North 78°02'42" West along said right of way line a distance of 198.48 feet to a point; thence South 79°36'29" West along said right of way line a distance of 89.73 feet to a point on the East line of Lot 6, Block 1, North Point Subdivision; thence North 02°30'44" East along said East line a distance of 65.79 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job 9447; thence North 68°04'33" East along said right of way line a distance of 91.70 feet to a point; thence North 69°21'14" East along said right of way line a distance of 444.60 feet to a point; thence South 02°27'41" West a distance of 276.86 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job BB0414; thence South 88°37'16" West along said right of way line a distance of 209.73 feet to the POINT OF BEGINNING and containing 1.95 acres (84,765 sq. ft.) more or less as shown on AHTD plans referenced as Job BB0414.

PERMANENT EASEMENT DESCRIPTION:

A 30-foot easement South of and adjacent to the Easterly right-of-way for Interstate 49 as shown on Arkansas Highway Transportation Department plans for Job No. BB0414. Being more particularly described as follows: A part of the SE¼ of the NE¼ of Section 33, and a part of the SW¼ of the NW¼ of Section 34, all within Township 17 North, Range 30 West, and Washington County, Arkansas: Commencing at the Southwest corner of the NW¼ of said Section 34; thence N02°27'51"E a distance of 1247.42 feet along the West line of said SW¼ of the NW¼ of Section 34 to the POINT OF BEGINNING; thence S88°37'16"W a distance of 1.49 feet; thence N78°02'42"W a distance of 196.06 feet; thence S79°36'29"W a distance of 80.30 feet; thence S66°16'50"W a distance of 11.28 feet to the West property line as described in File 2013-00021050; thence N02°30'44"E a distance of 33.44 feet along said West property line to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way N79°36'29"E a distance of 89.73 feet; thence S78°02'42"E a distance of 198.48 feet; thence N88°37'16"E a distance of 209.73 feet to the East line of said property; thence along said East property line S02°27'41"W a distance of 30.16 feet; thence leaving said East property line N81°40'58"W a distance of 0.53 feet; thence S88°37'16"W a distance of 209.20 feet to the POINT OF BEGINNING, containing 14,952 square feet or 0.34 acres, more or less.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.



TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above water.

The Grantor agrees no to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional pipe lines, electric power lines, telephone and/or television lines or cables upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.


The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.


WITNESS the execution hereof on this the 13 day of APRIL, 2017.

Drake ST Property, LLC, an Arkansas limited liability company

BY:


NEAL R. PENDERGRAFT, MGR
[Please print or type Name and Title]

ATTEST:


Woody Bassett
Attorney for Drake ST Property, LLC
[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

SS.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared NEAL R. Pendergraft and Woody Bassett, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Manager and Attorney, respectively, of **Drake ST Property, LLC, an Arkansas limited liability company**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 13th day of April, 2017.

MY COMMISSION EXPIRES

11/10/26





Notary Public

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **1155 Properties, LLC, an Arkansas limited liability company**, hereinafter called GRANTOR, for and in consideration of the sum of One Hundred Ninety Thousand Three Hundred Twenty Dollars (\$190,320.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of roadway, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, and appurtenances thereto, on over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

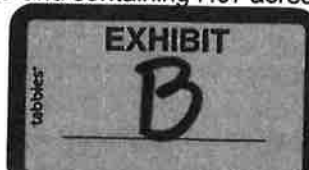
PROPERTY DESCRIPTION: Deed Ref: 2004-00000965

A part of Section 34, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows: Beginning at a point on the North Right-of-Way of State Highway No. 180, said point being 620.80 feet East of the West line of said Section 34 and running thence North 1,695.00 feet to the South Right-of-Way of US Highway No. 71 By-pass; thence S65°59'00"W along said Right-of-Way 446.90 feet; thence South 1,523.00 feet to the North Right-of-Way of State Highway No. 180; thence East along said Right-of-Way 411.33 feet to the point of beginning, containing 15.19 acres, more or less. LESS AND EXCEPT: A part of the NW¼ of the NW¼ of Section 34, T-17-N, R-30-W, Washington County, Arkansas, more particularly described as follows: Starting at the NW corner of the NW¼ of the NW¼ of Section 34; thence N88°34'00"E along the North line 964.00 feet to a point; thence S01°07'00"E 769.70 feet to a point on the Southeasterly existing Right-of-Way line of U.S. Highway No. 71 By-pass; thence S65°51'00"W along said existing Right-of-Way line 201.50 feet to the point of beginning; thence S01°05'00"E 106.20 feet to a point on the Southeasterly proposed Right-of-Way line of relocated U.S. Highway No. 71; thence S89°08'00"W along said proposed Right-of-Way line 171.80 feet to a point; thence S76°55'00"W along said Right-of-Way line a distance of 152.90 feet to a point on the Southeasterly existing Right-of-Way line of U.S. Highway No. 71 By-pass; thence N65°48'00"E 298.20 feet to the point of beginning, containing 0.33 acres, more or less. Subject to easements and rights of way of record, if any.

ALSO:

A part of Section 34, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows: Beginning at a point on the North Right-of-Way of State Highway No. 180, said point being 990.00 feet East of the West line of said Section 34 and running thence North 1,850.00 feet to the South Right-of-Way of US Highway No. 71 By-pass; thence S65°59'00"W along said Right-of-Way 401.14 feet; thence South 1,695.00 feet to the North Right-of-Way of State Highway No. 180; thence East along said Right-of-Way 369.20 feet to the point of beginning, containing 15.02 acres, more or less. LESS AND EXCEPT: A part of the NW¼ of the NW¼ of Section 34, T-17-N, R-30-W, Washington County, Arkansas, more particularly described as follows: Starting at the NW corner of the NW¼ of the NW¼ of Section 34; thence N88°34'00"E along the North line 964.00 feet to a point; thence S01°07'00"E 769.70 feet to a point on the Southeasterly existing Right-of-Way line of U.S. Highway No. 71 By-pass for the point of beginning; thence S01°07'00"E 264.70 feet to a point on the Southeasterly proposed Right-of-Way line of relocated U.S. Highway No. 71; thence S89°08'00"W along said proposed Right-of-Way line 368.40 feet to a point; thence N01°05'00"W 106.20 feet to a point on the Southeasterly Right of Way line of US Highway No. 71 By-Pass; thence N65°47'00"E along said Right-of-Way line 201.50 feet to a point; thence N65°51'00"E 198.80 feet to the point of beginning, containing 1.57 acres, more or less. Subject to easements and rights of way of record, if any.

LESS AND EXCEPT: Part of the West Half of the Northwest Quarter of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Commencing at a Half Inch Rebar found at the Quarter Corner of Sections 33 and 34; thence North 02°27'51" East along the West line of Section 34 a distance of 1479.12 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job 9447; thence North 69°21'14" East along said right of way line a distance of 227.50 feet to the POINT OF BEGINNING; thence continue North 69°21'14" East along said right of way line a distance of 79.97 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job 1534 Section 1; thence North 80°30'22" East along said right of way line a distance of 152.85 feet to a point; thence South 87°16'41" East along said right of way line a distance of 540.24 feet to a point; thence South 02°29'38" West a distance of 503.64 feet to a point on the Southern Right of V/ay of Interstate 49 as established by AHTD Job BB0414; thence North 87°06'30" West along said right of way line a distance of 77.97 feet to a point; thence North 66°50'23" West along said right of way line a distance of 302.08 feet to a point; thence North 77°47'17" West along said right of way line a distance of 257.10 feet to a point; thence North 81°40'58" West along said right of way line a distance of 149.89 feet to a point; thence North 02°27'41" East a distance of 276.86 feet to the POINT OF BEGINNING and containing 7.07 acres (308,105 sq. ft.) more or less as shown on AHTD plans referenced as Job BB0414.



PERMANENT EASEMENT DESCRIPTION:

A 30 foot easement South of and adjacent to the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414, Being more particularly described as follows: A part of the SW¼ of the NW¼ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW¼ of said Section 34; thence S87°24'17"E 209.32 feet along the South line of said SW¼ of the NW¼ to the West property line as described in File 2004-00000965; thence along said West property line N02°27'41"E 1261.87 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°27'41"E 30.16 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way S81°40'58"E 149.89 feet; thence S77°47'17"E 249.00 feet to the East line of said property; thence along said East property line S02°31'22"W 30.43 feet; thence leaving said East property line N77°47'17"W 253.10 feet; thence N81°40'58"W 145.80 feet to the POINT OF BEGINNING, containing 11,967 square feet or 0.27 acres, more or less.

ALSO:

A 30 foot easement South of and adjacent to the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414, Being more particularly described as follows: A part of the SW¼ of the NW¼ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas: Commencing at the Southwest corner of the NW¼ of said Section 34; thence S87°24'17"E a distance of 602.51 feet along the South line of said SW¼ of the NW¼ to the West property line as described in File 2004-00000965; thence along said West property line N02°31'22"E 1205.05 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°31'22"E 30.43 feet to a point on the Easterly right-of-way for Interstate 49 as shown on AHTD plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S77°47'17"E 8.10 feet, S66°50'23"E 302.08 feet, S87°06'30"E 77.97 feet to the East line of said property; thence along said East property line S02°29'38"W 30.00 feet; thence leaving said East property line N87°06'30"W 83.54 feet; thence N66°50'23"W 304.56 feet; thence N77°47'17"W 0.11 feet to the POINT OF BEGINNING, containing 11,646 square feet or 0.27 acres, more or less.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above water.

The Grantor agrees no to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional pipe lines, electric power lines, telephone and/or television lines or cables upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the 13 day of APRIL, 2017.

1155 Properties, LLC, an Arkansas limited liability company

BY:

[Signature]
NEAL R. PENDERGRAFT, MGR
[Please print or type Name and Title]

ATTEST:

Woody Bassett
Attorney for 1155 Properties, LLC
[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

}
SS.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared NEAL R. PENDERGRAFT and Woody Bassett, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Manager and Attorney, respectively, of **1155 Properties, LLC, an Arkansas limited liability company**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 13th day of April, 2017.

MY COMMISSION EXPIRES:

1/10/26



[Signature]
Notary Public



GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **RPM1 Properties, LLC**, an Arkansas limited liability company, hereinafter called GRANTOR, for and in consideration of the sum of Five Hundred Sixty-Five Thousand Three Hundred Twenty Dollars (\$565,320.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of roadway, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, and appurtenances thereto, on over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: Deed Ref: 2013-00000127

Part of the Northwest Quarter (NW $\frac{1}{4}$) of Section Thirty-four (34), Township Seventeen (17) North, Range Thirty (30) West, Washington County, Arkansas, described as follows, to-wit: Beginning at the Southeast corner of the said Northwest Quarter (NW $\frac{1}{4}$) and running thence N00 Degrees 05'21"W 2565.78 feet to the South line of the Arkansas State Highway Commission Right of Way; thence along said Right of Way line S66 Degrees 33'41"W 145.31 feet, S45 Degrees 02'15"W 107.74 feet, S27 Degrees 28'44" W 517.93 feet, S43 Degrees 37'19" W 163.19 feet, S54 Degrees 22'38"W 256.17 feet, S79 Degrees 47'51"W 358.46 feet, S82 Degrees 53'50"W 364.0 feet, S89 Degrees 53'44"W 167.44 feet; thence leaving said Right of way line and running S00 Degrees 00'01"E 1588.21 feet; thence S89 Degrees 39'28"E 466.92 feet; thence N01 Degree 30'39"E 431.40 feet; thence N87 Degrees 37'53"E 383.01 feet; thence S01 Degree 58'26"E 450.30 feet; thence S89 Degrees 47'21"E 778.31 feet to the point of beginning, and being subject to easements and rights of way of record. LESS AND EXCEPT: Part of the Northwest Quarter of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Commencing at a Half Inch Rebar found at the Quarter Corner of Sections 33 & 34; thence South 87°24'17" East along the South line of the Northwest Quarter of Section 34 a distance of 1317.66 feet to a point being used as the Center West Sixteenth Corner of said Section 34; thence North 02°25'01" East along the East line of the Southwest Quarter of the said Northwest Quarter a distance of 1,177.62 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job 880414 and the POINT OF BEGINNING; thence South 79°28'03" West along said right of way line a distance of 223.05 feet to a point; thence North 87°06'30" West along said right of way line a distance of 127.05 feet to a point; thence North 02°29'38" East a distance of 503.64 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job 1534 Section 1; thence South 87°16'41" East along said right of way line a distance of 167.50 feet to a point; thence North 85°21'44" East along said right of way line a distance of 364.01 feet to a point; thence North 82°17'31" East along said right of way line a distance of 359.03 feet to a point; thence North 57°00'34" East along said right of way line a distance of 255.98 feet to a point; thence North 45°59'17" East along said right of way line a distance of 163.48 feet to a point; thence North 29°53'39" East along said right of way line a distance of 518.56 feet to a point; thence North 47°36'56" East along said right of way line a distance of 107.70 feet to a point; thence North 69°00'43" East along said right of way line a distance of 71.89 feet to a point on the Southern Right of Way of Interstate 49 as established by AHTD Job BB0414; thence South 43°06'54" West along said right of way line a distance of 146.83 feet to a point; thence South 34°35'25" West along said right of way line a distance of 160.58 feet to a point; thence South 27°04'56" West along said right of way line a distance of 219.23 feet to a point; thence South 33°46'36" West along said right of way line a distance of 214.85 feet to a point; thence South 39°02'57" West along said right of way line a distance of 211.18 feet to a point; thence South 49°44'01" West along said right of way line a distance of 140.32 feet to a point; thence South 55°05'30" West along said right of way line a distance of 138.50 feet to a point; thence South 51°32'44" West along said right of way line a distance of 273.79 feet to a point; thence South 43°18'52" West along said right of way line a distance of 123.92 feet to a point; thence South 53°49'31" West along said right of way line a distance of 170.40 feet to a point; thence South 72°16'47" West along said right of way line a distance of 102.47 feet to the POINT OF BEGINNING and containing 9.21 acres (401,067 sq. ft.) more or less as shown on AHTD plans referenced as Job BB0414.

PERMANENT EASEMENT DESCRIPTION:

A 30-foot easement South and East of and adjacent to the Easterly right-of-way for Interstate 49 as shown on Arkansas Highway Transportation Department plans for Job No. BB0414. Being more particularly described as follows: A part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, Township 17 North, Range 30 West, Washington County, Arkansas. Commencing at the Southwest corner of the NW $\frac{1}{4}$ of said Section 34; thence S87°24'17"E a distance of 971.73 feet along the South line of said SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ to the West property line as described in File 2013-00000127; thence along said West property line N02°29'38"E a distance of 1097.61 feet to the POINT OF BEGINNING; thence continuing along said West property line N02°29'38"E a

distance of 30.00 feet to a point on the Easterly right-of-way for Interstate 49 as shown on Arkansas Highway Transportation Department plans for Job No. BB0414; thence along said Easterly right-of-way the following courses: S87°06'30"E a distance of 127.05 feet, N79°28'03"E a distance of 223.05 feet, N72°16'47"E a distance of 102.47 feet, N53°49'31"E a distance of 170.40 feet, N43°18'52"E a distance of 123.92 feet, N51°32'44"E a distance of 273.79 feet, N55°05'30"E a distance of 138.50 feet, N49°44'01"E a distance of 140.32 feet, N39°02'57"E a distance of 211.18 feet; thence leaving said Easterly right of way N38°31'42"E a distance of 243.33 feet; thence N20°15'19"E a distance of 195.51 feet to said Easterly right of way; thence along said Easterly right-of-way the following courses: N34°35'25"E a distance of 160.58 feet, N43°06'54"E a distance of 89.59 feet to a point on the South line of an existing 25 foot Water & Sewer easement described in Book 1045 Page 115; thence along said South line of an existing 25 foot Water & Sewer easement N69°01'00"E a distance of 68.68 feet; thence leaving said South line of an existing 25 foot Water & Sewer easement S43°06'54"W a distance of 149.13 feet; thence S34°35'25"W a distance of 154.57 feet; thence S20°15'19"W a distance of 196.57 feet; thence S38°31'32"W a distance of 247.05 feet; thence S39°02'57"W a distance of 215.37 feet; thence S49°44'01"W a distance of 144.53 feet; thence S55°05'30"W a distance of 138.98 feet; thence S51°32'44"W a distance of 114.91 feet; thence S45°15'53"W a distance of 45.70 feet; thence S51°32'44"W a distance of 110.00 feet; thence S43°18'52"W a distance of 124.62 feet; thence S53°49'31"W a distance of 179.30 feet; thence S72°16'47"W a distance of 110.04 feet; thence S86°17'59"W a distance of 41.70 feet; thence S79°28'03"W a distance of 187.69 feet; thence N87°06'30"W a distance of 130.37 feet to the POINT OF BEGINNING, containing 70,139 square feet or 1.61 acres, more or less.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above water.

The Grantor agrees no to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional pipe lines, electric power lines, telephone and/or television lines or cables upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

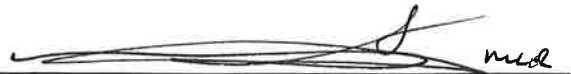
The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.


WITNESS the execution hereof on this the 13 day of APRIL, 2017.

RPM1 Properties, LLC, an Arkansas limited liability company

BY:


Neal R. Pendergraft, MGR
[Please print or type Name and Title]

ATTEST:


Attorney for RPM1 Properties, LLC
[Please print or type Name and Title]

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

SS.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Neal E. Pennington and Woody Bassett, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Manager and Attorney, respectively, of **RPM1 Properties, LLC, an Arkansas limited liability company**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 13th day of April, 2017.

MY COMMISSION EXPIRES:

1/10/26



Mary M Forrest
Notary Public