

City of Fayetteville Staff Review Form

2019-0798

Legistar File ID

12/3/2019

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

Tim Nyander

11/14/2019

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a resolution to authorize the acceptance of utility easements to the City of Fayetteville from the United States Postal Service (USPS) for sewer line installation related to the Kitty Creek sewer rehabilitation project, contingent on the vacation of an existing easement that will no longer be needed after the new line is installed.

Budget Impact:

N/A

N/A

Account Number

Fund

N/A

N/A

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

\$ -

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF DECEMBER 3, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Tim Nyander, Utilities Director

FROM: Corey Granderson, Utilities Engineer

DATE: November 14, 2019

SUBJECT: **Approval of a resolution to authorize the acceptance of utility easements to the City of Fayetteville from the United States Postal Service for sewer line installation related to the Kitty Creek sewer rehabilitation project, contingent on the vacation of an existing easement that will no longer be needed after the new line is installed.**

RECOMMENDATION:

Staff recommends approval of a resolution to authorize the acceptance of utility easements to the City of Fayetteville from the United States Postal Service (USPS) for sewer line installation related to the Kitty Creek sewer rehabilitation project, contingent on the vacation of an existing easement that will no longer be needed after the new line is installed.

BACKGROUND:

On June 6th, 2017 Resolution 113-17 was approved for McClelland Consulting Engineers, Inc. to begin design on the Kitty Creek Sewer Line Improvement Project. This project consists of replacing and upsizing approximately 5,400 linear feet of existing 10-inch sanitary sewer line. This upsize was identified in the 2014 Wastewater Collection System Master Plan. The engineering design and permitting of this project is nearing completion and easement acquisition has begun, prior to bidding.

DISCUSSION:

This sewer line crosses the Joyce Avenue USPS Post Office property and an alignment change will necessitate the dedication of new portions of sewer easement, and vacation of remaining obsolete portions of easement. A temporary easement for access during construction is also proposed. The USPS has a formal process and agreement language for this situation which has been reviewed and approved by the City Attorney's office.

BUDGET/STAFF IMPACT:

No impact to budget or staff.

Attachments:

Permanent Easement Agreement
Temporary Construction Easement Agreement

UTILITY EASEMENT

This UTILITY EASEMENT, (the "New Sewer Easement"), granted this ____ day of _____, 20____, by the United States Postal Service ("USPS"), an independent establishment of the executive branch of the Government of the United States, 475 L'Enfant Plaza, SW, Room 6670, Washington, DC 20260-1862 (the "Grantor"), to the City of Fayetteville, a municipal corporation, (the "Grantee"). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as required by context.

RECITALS

A. Grantor is the owner of a tract of land and improvements in Washington County, State of Arkansas, located at 1590 East Joyce Boulevard in Fayetteville, AR 72703-9998, (the "Grantor's Parcel"), recorded in Washington County on November 13, 1998, on Pages 98099345 through 98099347 and legally described in **Exhibit 1**, attached hereto and incorporated herein, at which Grantor operates the Fayetteville-Clarence B Craft Station.

B. Grantee has an existing easement on the Grantor's Parcel for existing sewer service, recorded in Washington County on July 2, 1979, on Page 994 and legally described in **Exhibit 2**, ("Existing Easement"), attached hereto and incorporated herein.

C. Grantee has determined that a new easement over portion of Grantor's Parcel, ("New Sewer Easement Area"), shown and described in **Exhibit 3**, attached hereto and incorporated herein, is reasonably necessary for installation of underground wastewater transmission gravity mains, ("Utility Improvements"), as part of construction activities related to Kitty Creek Sewer Improvements Project, hereinafter called the "Project", which Project is described in final design and construction plans dated April 23, 2018, under City of Fayetteville MCE Project Number FY17-2138, ("Final Plans"), which are on file with City of Fayetteville and are incorporated herein by reference.

D. Grantor and Grantee set forth below their respective rights and obligations for a New Sewer Easement on Grantor's Parcel.

For and in consideration of the mutual promises set forth herein and the termination of the Existing Easement to be executed by both parties concurrently with this New Sewer Easement and take effect upon completion of the Project under the Agreements set forth below, along with other good and valuable consideration, received in hand and acknowledged by the Grantor, the Grantor and Grantee covenant and agree as follows:

AGREEMENTS

1. Grantor hereby grants, declares, establishes and creates for the benefit of Grantee a perpetual non-exclusive easement over, under, along, across, and through the New Sewer Easement Area, for the purpose of installing, maintain and repairing the Utility Improvements which is related and necessary to the completion of the Project.
2. All work performed by Grantee and/or its contractors hereunder shall be coordinated with the postmaster or installation head and performed in full compliance with all applicable local, state or federal statutes, rules, regulations, orders, codes, directives, or ordinances and any binding judicial or administrative interpretations thereof or requirements thereunder and Grantee shall obtain all necessary local, state or federal permits, licenses and approvals necessary for the conduct of such work. In addition, for all cure and maintenance related activities, the locations of relocated fixtures, materials used and work to be performed within the New Sewer Easement Area must be approved by USPS.
3. Grantee shall require and ensure that any contractors working for Grantee, at their sole cost and expense, maintain and keep in effect during any and all construction or work activities within the New Sewer Easement Area insurance against claims for personal injury (including death) or property damage, under a policy of comprehensive general public liability insurance, with such limits (through basic coverage plus umbrella coverage) as may be reasonably requested by USPS from time to time, but not less than \$1,000,000 in respect of bodily injury (including death) and property damage, which amounts shall be adjusted upon reasonable request of USPS from time to time to amounts which are normal and customary for similar operations. Such policies of insurance shall name USPS as an additional insured. The policy shall provide that it shall not be cancelable nor may it expire without at least thirty (30) days' prior written notice to USPS. Prior to the commencement of the construction under the New Sewer Easement, there shall be delivered to USPS a certificate of the insurance carrier certifying that the policy so delivered has been issued and is in effect and the duration thereof. At least thirty (30) days before any policy shall expire (10 days for non-payment of premium), Grantee shall ensure that its contractor deliver to USPS a replacement certificate, and at least twenty (20) days prior to the date that the premium on any policy shall become due and payable, USPS shall be furnished with satisfactory evidence of its payment.
4. Grantee shall be responsible for maintenance and repair of the Utility Improvements. Grantee shall also be responsible for restoring any landscaping, grading, or paving disturbed within the New Sewer Easement Area during the Project or while performing any future maintenance or repair work. In addition, Grantee shall be responsible for Grantee's equipment and facilities within the New Sewer Easement Area, and any and all costs related thereto. Also, Grantee shall restore any area outside the Easement Area within Grantor's Parcel which is disturbed or damaged by Grantee, its agents, servants, employees, invitees, or contractors, including, without limitation, restoration of all improvements, landscaping, fencing, sidewalks, driveways, drive aisle and drive areas with like kind or better materials and products. In the event the Grantee fails in its responsibilities herein, upon written notice and 30 days opportunity to cure to Grantee, Grantor shall have the right to perform such maintenance, repair and restoration. Further, Grantee covenants to repay Grantor for Grantor's costs of performing such maintenance, repair and restoration within 30 days of receipt of an invoice from Grantor.

5. Grantee, by acceptance of this New Sewer Easement, agrees for and on behalf of itself, its agents, servants, employees, invitees, and contractors who may at any time use, occupy, visit, or maintain said New Sewer Easement Area that Grantor shall not be responsible for damage or loss to property, injuries, or death, which may arise from or be incident to the use and occupation of the New Sewer Easement Area as granted herein to Grantee, its agents, servants, employees, invitees, and contractors.
6. The Grantor shall not be liable and the Grantee waives and releases the Grantor from all claims for damage to persons or property sustained by the Grantee or its employees, agents, servants, invitees, contractors, or customers resulting by reason of the use of the New Sewer Easement.
7. Grantor reserves the right to use the New Sewer Easement Area for any purpose not inconsistent with the rights herein granted. During any and all period(s) of installation, maintenance or repair of the Utility Improvements, Grantee agrees to provide the Grantor, its employees, customers, and the public with continual and uninterrupted access to the Fayetteville-Clarence B Craft Station. Specifically, Grantee shall provide continuous access to the Grantor's driveway by way of North Vantage Drive during the following period of operation from 01:45 to 19:00 Monday through Saturday.

Also, Grantee shall provide continuous access to the two USPS drop boxes located along the eastern side of the circular drive connecting to the southern side of Grantor's driveway entrance to North Vantage Drive, during the following period of operation: from 09:00 to 18:00 Monday through Friday and from 10:00 to 15:00 on Saturday.

In the event Grantee needs to close or block any portion of the Grantor's driveway referenced above, or either of the USPS drop box circular drives referenced above, Grantee shall request such closure, in writing, to the Postmaster or Installation Head of the Fayetteville-Clarence B Craft Station, at least five (5) business days prior to such closure. Such closure shall be permitted only during the hours from 19:00 to 09:00 (the following morning) Monday through Friday, and from 15:00 Saturday to 01:45 Monday morning. With the aforementioned and following restrictions and requirements, approval of such request by Grantee shall not be unreasonably denied or delayed.

In addition, whenever a trench is exposed or pavement is broken up within any driveway, such condition(s) shall be described as "Compromised Area(s)". Whenever any vehicle crosses over any Compromised Area(s), Grantee shall ensure that such Compromised Area(s) shall be covered and secured with steel plate(s) of sufficient size and strength to withstand the weight of a tractor-trailer-size vehicle, so that such driveway may be kept open for traffic crossing for Grantor, its employees, contractors and invitees.

Except as specifically permitted above or in the event of an emergency, defined herein as a situation creating an immediate threat or danger to life and/or the environment, ("Emergency"), Grantee agrees that during performance of any and all construction or work activities, as permitted herein, Grantor's operations shall not be interrupted, disrupted or otherwise impeded as a result of such construction or work activities. Thus, in the event Grantee fails to meet any of the conditions or responsibilities set forth above, except on the event of an Emergency, Grantee shall be in breach of this New Sewer Easement. In the event of such a breach, Grantor shall notify the Grantee in

writing of the precise nature of the breach; email notice to the Grantee is specifically allowed. Grantee shall remedy such breach within three (3) hours of its receipt of Grantor's written notice. In the event the Grantee fails to remedy such breach, Grantor shall have the right to take any and all reasonable actions designed to restore continual and uninterrupted access to the Fayetteville-Clarence B Craft Station, and to return Grantor's operations to their prior status, before such interruption, disruption or impediment by Grantee. Further, Grantor shall be entitled to recover its costs, losses and damages resulting from such breach and cure from the Grantee.

8. Except in the event of an Emergency, Grantee shall provide Grantor with at least 5 business days prior notice before performing any activity within the New Sewer Easement Area. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee is required or desires to give or make under this New Sewer Easement, unless otherwise specified, will be effective and valid only when in writing and shall be deemed duly given when received if it is sent by USPS Mail, Registered Mail® or Certified Mail®, return receipt requested and postage prepaid to the respective addresses as set forth in this paragraph, or at the last address provided by a party and given by notice as provided in this paragraph. However in the event of the breach of paragraph 7 above by Grantee, notice by Grantor may be by email. For purposes of notices sent by USPS Mail, Registered Mail® or Certified Mail®, return receipt requested and postage prepaid. For purposes of notices set forth herein, addresses are:

Grantee:

City of Fayetteville
Attention: Mayor
113 W Mountain Street
Fayetteville, Arkansas 72701
Email: mayor@fayetteville-ar.gov

Grantor:

USPS Headquarters
Attention: Easement & Right of Way Specialist
475 L'Enfant Plaza, SW, Room 6670
Washington, DC 20260-1862

Copy To:

City of Fayetteville
Attention: City Attorney
113 W Mountain Street
Fayetteville, Arkansas 72701
Email: city_attorney@fayetteville-ar.gov

Copy To:

Fayetteville-Clarence B Craft Station
Attention: Postmaster
1590 East Joyce Boulevard
Fayetteville, AR 72703-9998

9. Within seven (7) days following completion of the installation of the Utility Improvements upon Grantor's Parcel, or September 30, 2020, whichever shall occur first, the Grantor and Grantee shall execute the Existing Right of Way Grant Termination and Elimination included as **Exhibit 4**, attached hereto and incorporated herein, to terminate the Existing Easement for sewer service referenced in paragraph B above, as such Existing Easement is rendered unnecessary by such installation of the Utility Improvements and by grant of this New Sewer Easement. If the Grantee fails to execute and record the Existing Right of Way Grant Termination and Elimination pursuant to this paragraph, the Grantee shall be in breach of this New Sewer Easement. In the event of such breach by Grantee, Grantor shall have the right to terminate this New Sewer Easement, in which event all Grantee's rights and privileges shall cease and the New Sewer Easement herein granted shall revert to Grantor.
10. In the event Grantee fails to exercise the rights and privileges herein granted for a period of one year following full execution, Grantor shall have the right to terminate this New

Sewer Easement, in which event all such rights and privileges shall cease and the New Sewer Easement herein granted shall revert to Grantor.

11. Any claim, controversy or dispute arising out of this New Sewer Easement shall be governed by applicable federal law. The remedies provided in this New Sewer Easement are non-exclusive and are in addition to any remedies available to the Grantor and Grantee under applicable law.
12. Grantor does not warrant that the New Sewer Easement Area is suitable for the purposes set forth herein and Grantee hereby waives any express or implied warranty on the part of Grantor. Grantor has no knowledge of subsurface conditions and makes no representations as to soil types, existence of underground utilities, or any other latent conditions that may impact Grantee's use and enjoyment of said New Sewer Easement.
13. This New Sewer Easement is granted subject to any and all restrictions, covenants, other easements, encumbrances, liens of any kind, leases, and interests of others, including rights-of-way for roads, pipelines, railroads, and public utilities, whether or not matters of public record.
14. Grantee is not permitted to discharge storm water runoff within the New Sewer Easement Area or onto, under, through or above Grantor's Parcel generally. Such prohibition shall include, but not be limited to, releasing or discharging silt, hazardous materials or other environmental contaminants within the New Sewer Easement Area or Grantor's Parcel generally. Further, Grantee shall comply with all environmental laws when performing any activity within the New Sewer Easement Area or Grantor's Parcel generally. In the event that any hazardous materials or other environmental contaminants are released or discharged, directly or indirectly, by the City of Fayetteville, their employees, agents, contractors or invitees, the City of Fayetteville shall be responsible for the cost of any remediation or clean up required by applicable law or regulations and shall indemnify and hold the Grantor, its successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees incurred by Grantor in connection with or related to any such release, discharge, remediation or clean up.

IN WITNESS WHEREOF, the parties hereto have executed this New Sewer Easement of the day and year first above written.

Signature Pages to Follow

Grantor:

United States Postal Service

By: _____

Its: Contracting Officer

STATE OF NORTH CAROLINA

)

) ss

COUNTY OF GUILFORD

)

On this _____ day of _____, 2019, personally appeared before me, _____, Contracting Officer, who being by me duly sworn, did say that he/she represents the United States Postal Service, and acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in effect, he/she executed said instrument as the act and deed of the United States Postal Service for the purposes therein mentioned.

SEAL

NOTARY PUBLIC

My commission expires: _____

Grantee:
City of Fayetteville

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of _____, 2019, personally appeared before me
_____, who being by me duly sworn, did say that he/she represents,
and acknowledged to me that, acting under a delegation of authority duly given and evidenced
by law and presently in effect, he/she executed said instrument as the act and deed of City of
Fayetteville for the purposes therein mentioned.

SEAL

NOTARY PUBLIC

My commission expires: _____

Exhibit 1- USPS Property Deed

www - spg
This instrument prepared by:

MARK E. DENNETT
Attorney
Law Department
United States Postal Service
225 North Humphreys Boulevard
Memphis, Tennessee 38166-0170

FILED FOR RECORD
'98 NOV 13 PM 2 57 ✓
WASHINGTON CO AR
K. HARNESS

WARRANTY DEED

STATE OF ARKANSAS

COUNTY OF WASHINGTON

THIS INDENTURE, made and entered into this 6th day of
November, 1998, by VANTAGE SQUARE, A JOINT VENTURE
COMPOSED OF A. W. REALTY COMPANY AND J. E. LINDSEY FAMILY
LIMITED PARTNERSHIP, Party of the First Part, and the UNITED STATES
POSTAL SERVICE, 475 L'Enfant Plaza, West, S.W., Washington, D.C. 20260-
6430, Party of the Second Part.

WITNESS that for and in consideration of the sum of ONE MILLION, TWO
HUNDRED SEVENTY-SEVEN THOUSAND THIRTY-TWO AND NO/100
DOLLARS (\$1,277,032.00), cash in hand paid, the receipt hereof is hereby
acknowledged, the Party of the First Part has bargained and sold and does
hereby bargain, sell, convey and confirm unto the said UNITED STATES
POSTAL SERVICE, 475 L'Enfant Plaza, West, S.W., Washington, D.C.
20260-6430, the following described real estate, situated and being in the City of
Fayetteville, County of Washington, State of Arkansas, and more particularly
described as follows:

LEGAL DESCRIPTION—LOT 3A

Part of the Northwest-Quarter of Section 25,
Township-17-North, Range-30-West, Fayetteville, Washington
County, Arkansas more particularly described as follows:
Commencing on the Northwest Corner of said Section 25:
thence S 00°52'09"E. along the west line of said Section 25,
659.18 feet; thence N 89°26'30"E, 1419.51 feet to the Point
of Beginning thence S 01°13'12"E. 201.93 feet; thence
S 88°57'05"W, 215.00 feet; thence S 01°13'12"E, 405.21 feet to
the northerly Right of Way line of Joyce Street; thence


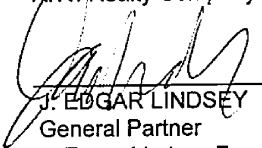
98099345

Exhibit 1- USPS Property Deed

S 88°57'05"W, along said northerly Right of Way line, 432.17 feet to a point of curvature; thence along said northerly Right of Way line along a curve to the right having a radius of 1290.45 feet, an arc length of 83.68 feet, being sustained by a chord bearing N 89°11'28"W, 83.66 feet; thence leaving said northerly Right of Way line, N 00°52'09"W, 201.95 feet; thence N 47°47'35"E, 614.99 feet; thence N 89°26'30"E, 265.33 feet to the Point of Beginning, containing 263,273 square feet (6.044 acres), more or less.

TOGETHER with all right, title and interest of the Party of the First Part in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land, and together with all the improvements thereon and the appurtenances thereunto belonging and we warrant the title against all persons whomsoever.

VANTAGE SQUARE, A JOINT VENTURE

By: 
CHARLES E. SCHARLAU
Chairman
A.W. Realty Company

J. EDGAR LINDSEY
General Partner
J. E. Lindsey Family Limited Partnership

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

On this 6th day of November, 1998, before me personally appeared Charles E. Scharlau, and James E. Lindsey, to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that they executed the same and are authorized to do so on behalf of A. W. REALTY COMPANY AND J. E. LINDSEY FAMILY LIMITED PARTNERSHIP.

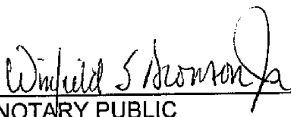

NOTARY PUBLIC

Exhibit 1- USPS Property Deed

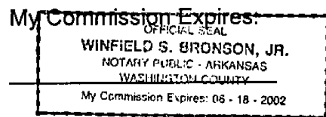


Exhibit 2 - Existing Easement Deed

RIGHT OF WAY GRANT

TRACT NO. 1

STATE OF ARKANSAS
COUNTY OF WASHINGTON

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of

and other valuable considerations to the undersigned, Arkansas Western Realty Company

paid, the receipt of which is hereby acknowledged, the said Grantor does hereby GRANT, SELL AND COVEY unto the City of Fayetteville, Arkansas, a municipal corporation (herein styled Grantee), its successors and assigns, the right of way and easement to construct, lay, remove, relay, enlarge and operate a water and/or sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described real estate, to-wit:

A part of the NW $\frac{1}{4}$ of Section 25, Township 17 North, Range 30 West, Washington County, Arkansas, and being more particularly described as follows: A permanent water and/or sewer easement 25 feet in width, being 12.5 feet in width on either side of a centerline described as beginning at a point 765 feet South and 87 feet East of the Northwest corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of aforementioned Section 25; thence N 10° 22' 18" W 328.6 feet; thence N 49° 39' 56" E 529.0 feet; thence N 47° 33' 26" E 560.2 feet; thence N 62° 34' 17" E 206.1 feet; thence N 76° 31' 15" E 275.2 feet; thence N 33° 44' 44" E 629.2 feet; thence N 17° 11' 36" E 299.6 feet; thence N 15° 26' 20" E 28.1 feet to the point of termination, said point being approximately 471.0 feet East of the NE $\frac{1}{4}$ corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of aforementioned Section 25. Also, a temporary construction easement 25 feet wide for a period not to exceed one year from the date hereof, parallel to and contiguous with the above described permanent easement and situated on the North and East sides thereof.

FILED FOR RECORD
APR 10 1979
CLERK

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, manholes and/or appurtenances thereto shall be maintained, with ingress to and egress from the real estate first hereinabove described for the purpose of constructing, inspecting, maintaining and repairing said lines, manholes and appurtenances of Grantee above described, and the removal, renewal and enlargement of such at will, in whole or in part.

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, 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 high water, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said right of way other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional pipe lines 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 grant in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof, this the 4th day of April, 1979.

WITNESS my hand and seal, this the 4th day of April, 1979.
Notary Public
William V. Martin, Secretary

ARKANSAS WESTERN REALTY COMPANY

By Charles E. Scharlau, President

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, personally appeared ARKANSAS WESTERN REALTY COMPANY by its President, Charles E. Scharlau, and Secretary William V. Martin, to me well known as the persons who executed the foregoing Right of Way Grant, and that they had executed same in behalf of said Corporation for the consideration and purpose therein mentioned and set forth.

WITNESS my hand and seal on this 4th day of April, 1979.

Notary Public

Exhibit 3 - Easement Legal Description and Survey Drawing

USPS Tract

PERMANENT UTILITY EASEMENT

A Permanent Utility Easement (PUE) across part of the northwest quarter of the northwest quarter of Section 25, Township 17 North, Range 30 West, in the City of Fayetteville, Washington County, Arkansas, being also a part of the United States Postal Service (USPS) property as described in Washington County document 98-099345, and being more particularly described as follows:

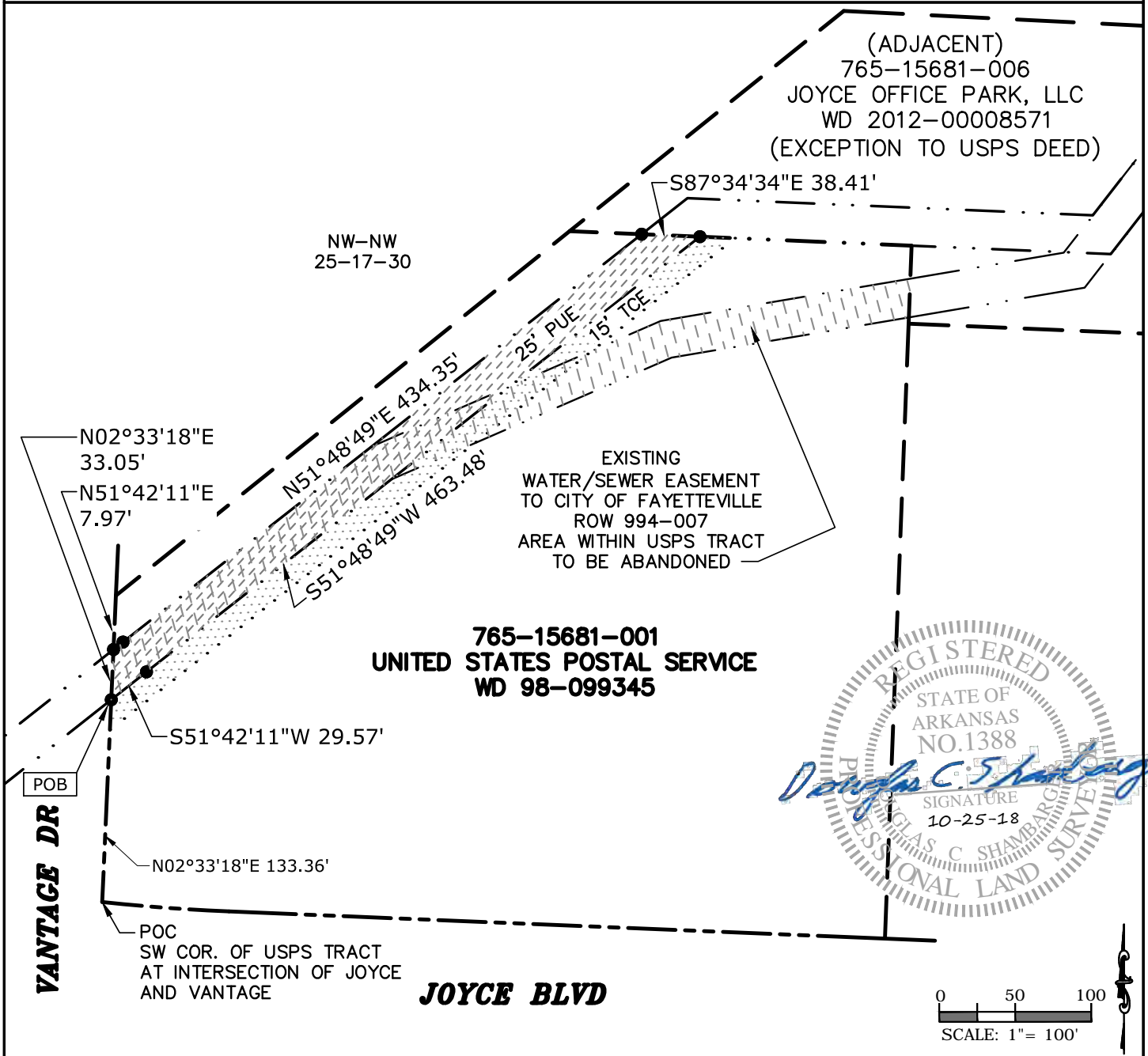
Commencing at the southwest corner of the above-noted USPS property; thence along the west line of the said USPS property N02°33'18"E 133.36 feet to the PUE Point of Beginning; thence continuing N02°33'18"E 33.05 feet; thence leaving the said west line of the USPS property N51°42'11"E 7.97 feet; thence N51°48'49"E 434.35 feet to the north line of the USPS property, the said north line being as described in the adjacent Joyce Office Park property deed recorded at Washington County document 2012-00008571; thence along the said north line of the USPS property S87°34'34"E 38.41 feet; thence leaving the north line S51°48'49"W 463.48 feet; thence S51°42'11"W 29.57 feet to the PUE Point of Beginning, enclosing 11,692 square feet, or 0.27 acres.

Exhibit 3 - Easement Legal Description and Survey Drawing

BASIS OF BEARINGS:
ARKANSAS STATE PLANE COORDINATE SYSTEM,
NAD 83, NORTH ZONE.
(NOT A PLAT OF SURVEY)

UTILITY EASEMENT USPS EXHIBIT "A" MAP

PUE - 11,692 SQ. FT. (0.27 AC.)
TCE - 7,624 SQ. FT. (0.18 AC.)



SHEET 2 OF 3

LEGEND

	PROPOSED UTIL. EASEMENT		EXISTING RIGHT OF WAY LINE
	PROPOSED TEMP. CONST. ESMT.		EXISTING PROPERTY LINE
	TAX PARCEL LINE		LAND LINE

**CITY OF
FAYETTEVILLE**

Property Owner: UNITED STATES
POSTAL SERVICE

Drawn by : McClelland Consulting Engineers

Date: October 2018 Scale : 1" = 100'

Project No. 172138

Project Name:
KITTY CREEK
SEWER LINE

No.	Revisions	Date

Exhibit 4 – Example of Easement Release Forms

CITY OF FAYETTEVILLE, ARKANSAS

Right-of-Way, Easement or Alley VACATION

FOR STAFF USE ONLY

Date Application Submitted:

Date Accepted as Complete:

Project Number:

Public Hearing Date:

FEE: \$200.00**Sign Fee: \$5.00**

S-T-R:

PP#:

Zone:

Please fill out this form completely, supplying all necessary information and documentation to support your request.
Your application will not be placed on the Planning Commission agenda until this information is furnished.

Application:

Indicate one contact person for this request: _____ Applicant _____ Representative

Applicant (person making request):***Representative (engineer, surveyor, realtor, etc.):***

Name: _____

Name: _____

Address: _____

Address: _____

Phone: () _____

Phone: () _____

Email: _____

Email: _____

Fax: () _____

Fax: () _____

Site Address / Location: _____

Legal description of area to be vacated (attach separate sheet if necessary):

Current Zoning District: _____

Assessors Parcel Number(s) for subject property: _____

FINANCIAL INTERESTSThe following entities and / or people have financial interest in this project:

Exhibit 4 – Example of Easement Release Forms

APPLICANT / REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Name (printed): _____ Date: _____

Signature: _____

PROPERTY OWNER(S) / AUTHORIZED AGENT: I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. (If signed by the authorized agent, a letter from each property owner must be provided indicating that the agent is authorized to act on his/her behalf.)

Owners (attach additional info if necessary):

Name (printed): _____ Address: _____

Signature: _____

Date: _____ Phone: () _____

Name (printed): _____ Address: _____

Signature: _____

Date: _____ Phone: () _____

Vacation Checklist:

Attach the following items to this application:

- (1) Payment in full of applicable fees for processing the application:
\$200.00 application fee
\$5.00 public notification sign fee
- (2) Metes and bounds legal description of the area to be vacated, not the entire property (this may be included on the survey plat).
- (3) Survey of the site depicting the perimeter property lines and area within the property to be vacated.
- (4) CD or USB Flashdrive containing a copy of the legal description in MS Word and PDF copies of the signed application and all other items submitted with this project.
- (5) A surveyor should stake the area on the site to be vacated for utility company review on their site visit.
- (6) A letter addressed to the Planning Commission and City Council describing the scope, nature, and intent of the request.
- (7) Documentation stating names of all owners of property adjacent to the street right-of-way, alley, or easement to be vacated.

Exhibit 4 – Example of Easement Release Forms

- (8) A copy of the county parcel map from the Washington County Assessor's office or from the Washington County website (www.co.washington.ar.us). The subject property and all adjacent parcels should be identified on this parcel map. The owner's name, official mailing address, and the parcel number for every adjacent property shall be shown on this map.
- (9) Petition to vacate street right-of-way, alley, or easement (sample petition is attached).
- (10) For applications to vacate an access easement, alley or right-of-way only: Written consent is required from all adjacent property owners and is required to be submitted with the application (example form is attached).
- (11) Comments from all utility companies concerning the street right-of-way, alley, or easement to be vacated and its relationship to existing or planned utilities with recommendations as to what action should be taken (an example comment form is attached) is required at application submittal.
- (12) The applicant is responsible for meeting the public notification requirements for a Vacation listed on the Notification Requirements pages in this application.

Utility Representatives for a Vacation Request *

Name	Company	Telephone	Email
Jeff Hamilton	AT&T	442-3107	jh5430@att.com
Chad Hodge	Cox Communications	871-0339	Chad.Hodge@cox.com
John Le	AEP/SWEPCO	973-2426	ttle@aep.com
Scott Stokes	Black Hills Corp.	435-0229	Scott.Stokes@blackhillscorp.com
Wes Mahaffey Or Mike Phipps	Ozarks Electric	684-4949 684-4696	wmahaffey@ozarksecc.com mphipps@ozarksecc.com

City Divisions:

Mark Rogers	Water and Sewer	575-8392	mrogers@fayetteville-ar.gov
Drew Cook	Solid Waste	575-8397	acook@fayetteville-ar.gov
Terry Gulley	Transportation	444-3491	tgulley@fayetteville-ar.gov

***Solid Waste & Transportation sign off is required only when a ROW, Alley, or Drainage Easement Vacation is being requested.**

SAMPLE PETITION*

PETITION TO VACATE A(N) *(alley, easement, right-of-way)* LOCATED IN *(lot, block, subdivision)*, CITY OF FAYETTEVILLE, ARKANSAS

TO: The Fayetteville City Planning Commission and
The Fayetteville City Council

We, the undersigned, being all the owners of the real estate abutting the *(alley, easement, right-of-way)* hereinafter sought to be abandoned and vacated, lying in *(lot, block, subdivision)*, City of Fayetteville, Arkansas, a municipal corporation, petition to vacate a(n) *(alley, easement, right-of-way)* which is described as follows:

(Legal Description of area to be vacated)

That the abutting real estate affected by said abandonment of the alley are *(lot, block, subdivision of each adjoining lot to the area requested to be vacated)* City of Fayetteville used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described *(alley, easement, right-of-way)*.

The petitioners pray that the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Fayetteville, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owners be free from the easements of the public for the use of said alley.

Dated this ____ day of _____, 20____.

Printed Name

Signature

Printed Name

Signature

*** Note: This is a sample - each applicant is responsible for submitting a petition which accurately reflects their specific request.**

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: _____

UTILITY COMPANY: _____

APPLICANT NAME: _____ APPLICANT PHONE: _____

REQUESTED VACATION (*applicant must check all that apply*):

- ☐ Utility Easement
- ☐ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ☐ Alley
- ☐ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address _____

- _____
- ☐ (*ATTACH legal description and graphic representation of what is being vacated-SURVEY*)

UTILITY COMPANY COMMENTS:

- ☐ No objections to the vacation(s) described above, and no comments.
- ☐ No objections to the vacation(s) described above, provided following described easements are retained.
(State the location, dimensions, and purpose below.)

- _____
- _____
- ☐ No objections provided the following conditions are met:

Signature of Utility Company Representative

Title

ADJACENT PROPERTY OWNER NOTIFICATION/APPROVAL FORM

FOR RIGHT- OF- WAY, ALLEY, AND EASEMENT VACATION REQUESTS

Date: _____

Address / location of vacation: N Ruppel Road, Fayetteville, AR

Adjacent property address: 2143 N Ruppel Road, Fayetteville, AR 72704

Pt NE SE Section 1, Township 16 North, Range 31 West, Washington County Assessment Parcel #765-24064-000

REQUESTED VACATION:

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

Part of the NE¼ of the SE¼ of Section 1, Township 16 North, Range 31 West, Washington County, Arkansas, being more particularly described as follows: Commencing at the SE corner of the NE¼ of the SE¼ of Section 1, Township 16 North, Range 31 West, and running thence N 86°59'04" W 697.70 feet and N 03°00'56" E 174.00 feet to the Point of Beginning; thence N 14°59'45" E 140.15 feet; thence N 01°43'31" E 216.75 feet; thence N 00°44'47" E 265.46 feet; thence N 03°17'02" E 307.088 feet; thence S 88°49'02" E 181.907 feet; thence S 70°39'34" W 70.76 feet; thence along a curve to the left having a radius of 95.00 feet, an arc length of 103.515 feet, a delta of 60°18'41", and a chord bearing and distance of S 39°26'39" W 98.469 feet; thence S 08°13'43" W 52.57 feet; thence S 05°56'05" W 123.24 feet; thence S 00°46'04" W 295.85 feet; thence S 01°40'21" W 217.17 feet; thence along a curve to the right having a radius of 475.00 feet, an arc length of 40.955 feet, a delta of 4°56'24", and a chord bearing and distance of S 04°08'33" W 40.942 feet; thence S 45°48'55" W 18.246 feet; thence along a curve to the left having a radius of 655.50 feet, an arc length of 106.08 feet, a delta of 9°16'20" and a chord bearing and distance of S 41°10'45" W 105.964 feet to the point of beginning, containing 48,799 square feet or 1.12 acres, more or less.

ADJACENT PROPERTY OWNERS COMMENTS:

- ☐ I have been notified of the requested vacation and decline to comment.
- ☐ I *do not object* to the vacation described above.
- ☐ I *do object* to the requested vacation because:
- _____
- _____
- _____

Ruppel Road Vacation

Project Name

WT Transfer Holding Company LLC

Name of Adjacent Property Owner (*printed*)

Signature of Adjacent Property Owner

Applicant Name

NOTIFICATION REQUIREMENTS

Written Notification Process:

- (1) The applicant shall mail a written notice of the hearing by first-class mail to the address of each adjacent landowner as such address is shown in the records of the Washington County Assessor's Office. Adjacent landowners include those across street rights-of-way, excluding interstates.
- (2) By the revision submittal prior to the public hearing, the applicant shall provide the following to the Planning Division (**contact staff planner for submittal deadline**):
 - a. alphabetical list of the landowners receiving notification (County Assessor's Office)
 - b. map showing the landowners' relationship to the site (County Assessor's Office)
 - c. copy of the notice sent to the landowners (example attached)
 - d. certificate of mailing (**example attached**)

Sign Posting Process:

- (1) Signs shall be made available to the applicant by the Planning Division. A \$5 fee per sign shall be remitted by the applicant (**contact staff planner for date to pick up sign**).
 - a. The applicant shall post notice on the land for which the use is requested in a visibly prominent location no more than ten (10) feet from the street and shall not impede the vision of drivers or pedestrians.
 - b. The staff planner may require an alternate location where the property is not adjacent to a street.
 - c. Additional signs may be required by the staff planner.
- (2) By the revision submittal prior to the hearing, the applicant shall post the sign and submit a certificate of sign posting to the Planning Division. The sign(s) shall be photographed by the applicant and attached to the certificate (**example attached**).
- (3) The Planning Division will be responsible for retrieval of signs after the hearing; if a hearing is postponed, the applicant will be notified when a new sign has been created. The applicant shall then be responsible for posting the new date of the hearing in accordance with the criteria herein.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this ____ day of _____, 20____, and addressed as follows:

Name: _____
Street Address _____
City, State, Zip _____

Name: _____
Street Address _____
City, State, Zip _____

Name: _____
Street Address _____
City, State, Zip _____

Name: _____
Street Address _____
City, State, Zip _____

(name of person completing the mailing)

(signature of person completing the mailing)

City File No./Name: _____

THIS IS AN EXAMPLE ONLY – DO NOT USE THIS SHEET

WRITTEN NOTIFICATION FORM

Project Description:

The applicant Name proposes a Type of Development at Project Address.

Building/land Use: _____

Zoning: _____

Size of Property: _____

Density/Intensity: _____

Public Hearings:

Planning Commission; 5:30 PM; Month/Date/Year; 113 West Mountain Street (City Administration Building Room 219) Fayetteville, AR 72701

Property Owner:

Name: _____ Phone #: _____

Developer:

Name: _____ Phone #: _____

Review Location:

The project information is available for public review at the City of Fayetteville Planning Division, 125 West Mountain Street, Fayetteville, AR 72701 Monday-Friday 8AM-5PM; 479.575.8267.

THIS IS AN EXAMPLE ONLY – DO NOT USE THIS SHEET

CERTIFICATE OF SIGN POSTING

(attach photo here)
(sign lettering must be legible in photo)

I, _____ *(print the name of the*
applicant/representative/person posting sign), attest that the above sign was posted on
_____ *(month/day/year) adjacent to*
_____ *(name of street).*

(signature of person completing the sign posting)

City File No./Name: _____

TEMPORARY CONSTRUCTION EASEMENT

This TEMPORARY CONSTRUCTION EASEMENT, (the "TCE") granted this _____ day of _____, 2019, by the United States Postal Service ("USPS"), an independent establishment of the executive branch of the Government of the United States, 475 L'Enfant Plaza, SW, Room 6670, Washington, DC 20260-1862 (the "Grantor"), to the City of Fayetteville, a municipal corporation, (the "Grantee"). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as required by context.

RECITALS

A. Grantor is the owner of a tract of land and improvements in Washington County, State of Arkansas, located at 1590 East Joyce Boulevard in Fayetteville, AR 72703-9998, (the "Grantor's Parcel"), recorded in Washington County on November 13, 1998, on Pages 98099345 through 98099347 and legally described in **Exhibit 1**, attached hereto and incorporated herein, at which Grantor operates the Fayetteville-Clarence B Craft Station.

B. Grantee has an easement on the Grantor's Parcel for existing sewer service, recorded in Washington County on July 2, 1979, on Page 994 and legally described in **Exhibit 2** ("Existing Easement"), attached hereto and incorporated herein.

C. Grantee has determined that a temporary easement over portion of Grantor's Parcel, ("TCE Area"), shown and described in **Exhibit 3**, attached hereto and incorporated herein, is reasonably necessary for construction logistics, and staging of materials and equipment, as part of the installation of underground wastewater transmission gravity mains, ("Utility Improvements"), as part of construction activities related to Kitty Creek Sewer Improvements Project, hereinafter called the "Project", which Project is described in final design and construction plans dated April 23, 2018 under City of Fayetteville MCE Project Number FY17-2138, ("Final Plans"), which are on file with City of Fayetteville and are incorporated herein by reference.

D. As a result of the Project, Grantee shall no longer require the Right of Way Grant attached hereto and incorporated herein as Exhibit 2.

E. Grantor and Grantee set forth below their respective rights and obligations for a TCE on the Grantor's Parcel.

For and in consideration of the mutual promises set forth herein and the sum of five hundred five dollars and zero cents, (\$500.00), of which said sum \$500.00 represents review fee, and the abandonment of the Existing Easement to be executed by both parties concurrently with this TCE and take effect upon completion of the Project under the Agreements set forth below, along with other good and valuable consideration, received in hand and acknowledged by the Grantor, the Grantor and Grantee covenant and agree as follows:

AGREEMENTS

1. Grantor hereby grants, declares, establishes and creates for the benefit of Grantee a temporary, non-exclusive easement over, under, along, across, and upon the TCE Area, for the purpose of construction logistics, staging of materials and equipment as shown in **Exhibit 3**, attached hereto and incorporated herein.

2. This TCE shall commence on October 1, 2019, provided that it has been fully executed and that Grantee has paid Grantor the consideration referenced above. This TCE shall expire upon the Grantee's completion of the Project or by September 30, 2020 whichever shall first occur. Upon the expiration or termination of the TCE, all of the rights and benefits of Grantee in this TCE shall automatically cease and be of no further force or effect. Also upon the expiration or termination of the TCE, Grantee shall release the Right of Grant at Exhibit 4, by completing, filing, and successfully concluding the City of Fayetteville, Arkansas, Right-of-Way, Easement or alley Vacation application, ("Application"), attached hereto and incorporated herein as Exhibit 4, as the Applicant, and shall supply all the information and items required to be submitted, pursuant to such Application. Grantor shall sign such Application as the Property Owner, but shall add the following language above such signature. "The United States Postal Service is an independent establishment of the executive branch of the Government of the United States, and, by the signature of its contracting officer below, does not waive its sovereign immunity from state and local authority," In the event Grantee breaches such obligation to effectively and completely release the Right of Way, Grantor shall be entitled monetary damages in the amount of \$25,000. The remedies provided in this paragraph are non-exclusive and are in addition to any remedies available to the Grantor under applicable law.

3. All work performed by Grantee or its contractors hereunder shall be coordinated with the postmaster or installation head and performed in full compliance with all applicable local, state and federal statutes, rules, regulations, orders, codes, directives, and ordinances, and any binding judicial or administrative interpretations thereof or requirements thereunder. In addition, Grantee shall obtain all necessary local, state and federal permits, licenses and approvals necessary for the performance of such work.

4. Prior to the expiration or termination of this TCE, Grantee shall restore the TCE Area, and any other areas of the Grantor's Parcel, to the same condition or better condition than it was in prior to Grantee's entry, including but not limited to all landscape and hardscape materials; re-sodding any grass areas that were damaged; replacing any asphalt removed or destroyed for grading purposes; and replacing any curb or gutter, or other structures or improvement removed or damaged by Grantee in the course of performance of the work. In the event the Grantee fails in its responsibilities herein, upon written notice and 30 days opportunity to cure to Grantee, Grantor shall have the right to perform such maintenance, repair and/or restoration and Grantee covenants to repay Grantor within 30 days of receipt of an invoice from Grantor.

5. During the term of this TCE, Grantee shall be responsible for maintenance and repair of the TCE Area, which includes but is not limited to snow and ice removal, landscaping, grading, paving and removal of all trash and debris caused by Grantee's exercise of its rights under this TCE. In addition, Grantee shall be responsible for Grantee's equipment and facilities, and any and all costs related thereto. In the event the Grantee fails in its responsibility to maintain and repair the TCE Area as set forth above, upon reasonable

notice and opportunity to cure, Grantor shall have the right to perform such maintenance and/or repair and shall further have the right to recover its costs from the Grantee.

6. Grantee shall require and ensure that any consultant, contractor or subcontractor entering the TCE Area on behalf of Grantee maintain and keep in effect insurance, with USPS named as additionally insured, against claims for personal injury, (including death), and property damage, under a policy of comprehensive general public liability insurance, with such limits, (through basic coverage plus umbrella coverage), as may be reasonably requested by the Grantor from time to time, but not less than \$1,000,000 in coverage for bodily injury, (including death), and property damage, which amounts shall be adjusted upon reasonable request of Grantor from time to time to amounts which are normal and customary for similar operations. Such policies of insurance shall name USPS as an additional insured. The policy shall provide that it shall not be cancelable nor may it expire without at least thirty (30) days' prior written notice to the Grantor.

Prior to the commencement of the construction under the TCE, there shall be delivered to the Grantor a certificate of the insurance carrier certifying that the policy so delivered has been issued and is in effect and the duration thereof. At least thirty (30) days before any policy shall expire (10 days for non-payment of premium), Grantee shall require and ensure that any consultant, contractor, or subcontractor working on its behalf deliver to the Grantor a replacement certificate, and at least twenty (20) days prior to the date that the premium on any policy shall become due and payable, the Grantor shall be furnished with satisfactory evidence of its payment.

7. Grantee, by acceptance of this TCE, agrees for and on behalf of itself and all persons who may at any time use, occupy, visit or maintain said TCE herein granted to the Grantee, that the Grantor, shall not be responsible for damages, loss to property, injuries or death, which may arise from or be incident to the use or occupation of the TCE Area.

8. The Grantor shall not be liable and the Grantee waives and releases the Grantor from all claims for damage to persons or property sustained by the Grantee, or the Grantee's employees, agents, servants, invitees, contractors and customers resulting by reason of occupying or visiting the property that is the subject of this TCE and/or pertaining to any equipment or appurtenances being used. All property belonging to the Grantee and any use of the TCE shall be at the risk of the Grantee, and the Grantor shall not be liable for damages to any such property or for theft or misappropriation thereof.

9. Grantor reserves the right to use the TCE Area for any purpose not inconsistent with the rights herein granted. During the term of this TCE, Grantee agrees to provide the Grantor, its employees, contractors, customers, and the public with continual and uninterrupted access to the Fayetteville-Clarence B Craft Station. Specifically, Grantee shall provide continuous access to the Grantor's driveway by way of North Vantage Drive during the following period of operation: from 01:45 to 19:00 Monday through Saturday.

Also, Grantee shall provide continuous access to the two USPS drop boxes located along the eastern side of the circular drive connecting to the southern side of Grantor's driveway entrance to North Vantage Drive, during the following period of operation: from 09:00 to 18:00 Monday through Friday and from 10:00 to 15:00 on Saturday.

In the event Grantee needs to close or block any portion of the Grantor's driveway referenced above, or either of the USPS drop box circular drives referenced above, Grantee shall request such closure, in writing, to the Postmaster or Installation Head of the

Fayetteville-Clarence B Craft Station, at least five (5) business days prior to such closure. Such closure shall be permitted only during the hours from 19:00 to 09:00 the following morning from Monday through Friday and from 15:00 Saturday to 01:45 Monday morning. With the aforementioned and following restrictions and requirements, approval of such request by Grantee shall not be unreasonably denied or delayed.

In addition, whenever a trench is exposed or pavement is broken up within any driveway, such condition(s) shall be described as "Compromised Area(s)". Whenever any vehicle crosses over any Compromised Area(s), Grantee shall ensure that such Compromised Area(s) shall be covered and secured with steel plate(s) of sufficient size and strength to withstand the weight of a tractor-trailer-size vehicle, so that such driveway may be kept open for traffic crossing for Grantor, its employees, contractors and invitees.

Further, during any period in which Grantor's driveway onto North Vantage Drive is restricted from two lanes to one lane, Grantee shall ensure that adequate signage and flagmen are in place to direct traffic. Except as specifically permitted above, or in the event of an emergency, defined herein as a situation creating an immediate threat or danger to life and/or the environment, ("Emergency"), Grantee agrees that during performance of any and all construction or work activities, Grantor's operations shall not be interrupted, disrupted or otherwise impeded as a result of such construction or work activities. Thus, in the event Grantee fails to meet any of the conditions, responsibilities, or restrictions set forth above, except in the event of an Emergency, Grantee shall be in breach of this TCE. In the event of such a breach, Grantor shall notify the Grantee in writing of the precise nature of the breach; email notice to the Grantee is specifically allowed. Grantee shall remedy such breach within three (3) hours of its receipt of Grantor's written notice. In the event the Grantee fails to remedy such breach, Grantor shall have the right to take any and all reasonable actions designed to restore continual and uninterrupted access to the Fayetteville-Clarence B Craft Station, and to return Grantor's operations to their prior status, before such interruption, disruption or impediment by Grantee. Further, Grantor shall be entitled to recover its costs, losses and damages for such interference and the cure for such interference with access from the Grantee.

10. Except in the event of an Emergency, prior to performing any activity within the TCE Area, Grantee shall provide Grantor with at least 5 business days of prior notice before entering the TCE Area. For purposes of notices set forth herein, addresses are:

Grantee:

City of Fayetteville
Attention: Mayor Lioneld Jordan
113 W Mountain Street
Fayetteville, Arkansas 72701
Email: mayor@fayetteville-ar.gov

Grantor:

USPS Headquarters
Attention: Easement and Right of Way
Specialist
475 L'Enfant Plaza, SW, Room 6670
Washington, DC 20260-1862
Email: James.M.Ruffing@usps.gov

Copy To:

City Attorney
Attention: Kit Williams
113 W Mountain Street
Fayetteville, Arkansas 72701
Email: city_attorney@fayetteville-ar.gov

Copy To:

Fayetteville-Clarence B Craft Station
Attention: Postmaster
1590 East Joyce Boulevard
Fayetteville, AR 72703-9998
Email: Brian.A.Rogers@usps.gov

11. Any claim, controversy or dispute arising out of this TCE shall be governed by federal law. The remedies provided in this TCE are non-exclusive and are in addition to any remedies available to the Grantor and Grantee under applicable law.

12. This TCE is granted subject to any and all restrictions, covenants, other easements, encumbrances, liens of any kind, leases, and interests of others, including rights-of-way for roads, pipelines, railroads, and public utilities, whether or not matters of public record.

13. The Grantor does not warrant that the TCE Area are suitable for the purposes set forth herein and Grantee hereby waives any express or implied warranty on the part of Grantor. Grantor has no knowledge of subsurface conditions and makes no representations as to soil types, existence of underground utilities, or any other latent conditions that may impact Grantee's use and enjoyment of said TCE.

14. Grantee is not permitted to discharge storm water runoff within the TCE Area or Grantor's Parcel generally. Such prohibition shall include, but not be limited to, discharging silt, hazardous materials or other environmental contaminants within the TCE Area or Grantor's Parcel generally. Further, Grantee shall comply with all environmental laws when performing any activity within the TCE Area or Grantor's Parcel generally. In the event that any hazardous materials or other environmental contaminates are discharged by the Grantee, its employees, agents, contractors or invitees, the Grantee, shall be solely responsible for the cost of any remediation or clean up required by applicable law or regulations and shall indemnify and hold the Grantor, its successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees incurred by Grantor in connection with or related to any such discharge, remediation or clean up.

15. Each individual signing on behalf of a party to this TCE states that he or she is the duly authorized representative of the signing party and that his or her signature on this TCE has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Construction Easement of the day and year first above written.

Grantor:

United States Postal Service

By: _____

Its: Contracting Officer

STATE OF NORTH CAROLINA

)

) ss

COUNTY OF GUILFORD

)

On this ____ day of _____, 2019, personally appeared before me, _____, Contracting Officer, who being by me duly sworn, did say that he/she represents the United States Postal Service, and acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in effect, he/she executed said instrument as the act and deed of the United States Postal Service for the purposes therein mentioned.

SEAL

NOTARY PUBLIC

My commission expires: _____

Grantee:
City of Fayetteville

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____) ss

On this ____ day of _____, 2019, personally appeared before me,
_____, who being by me duly sworn, did say that he/she represents,
and acknowledged to me that, acting under a delegation of authority duly given and evidenced
by law and presently in effect, he/she executed said instrument as the act and deed of City of
Fayetteville for the purposes therein mentioned.

SEAL

NOTARY PUBLIC

My commission expires: _____

Exhibit 1- USPS Property Deed

This instrument prepared by:

MARK E. DENNETT
Attorney
Law Department
United States Postal Service
225 North Humphreys Boulevard
Memphis, Tennessee 38166-0170

FILED FOR RECORD
'98 NOV 13 PM 2 57 ✓
WASHINGTON CO AR
K. HARNESS

WARRANTY DEED

STATE OF ARKANSAS

COUNTY OF WASHINGTON

THIS INDENTURE, made and entered into this 6th day of
November, 1998, by VANTAGE SQUARE, A JOINT VENTURE
COMPOSED OF A. W. REALTY COMPANY AND J. E. LINDSEY FAMILY
LIMITED PARTNERSHIP, Party of the First Part, and the UNITED STATES
POSTAL SERVICE, 475 L'Enfant Plaza, West, S.W., Washington, D.C. 20260-
6430, Party of the Second Part.

WITNESS that for and in consideration of the sum of ONE MILLION, TWO
HUNDRED SEVENTY-SEVEN THOUSAND THIRTY-TWO AND NO/100
DOLLARS (\$1,277,032.00), cash in hand paid, the receipt hereof is hereby
acknowledged, the Party of the First Part has bargained and sold and does
hereby bargain, sell, convey and confirm unto the said UNITED STATES
POSTAL SERVICE, 475 L'Enfant Plaza, West, S.W., Washington, D.C.
20260-6430, the following described real estate, situated and being in the City of
Fayetteville, County of Washington, State of Arkansas, and more particularly
described as follows:

LEGAL DESCRIPTION—LOT 3A

Part of the Northwest-Quarter of Section 25,
Township-17-North, Range-30-West, Fayetteville, Washington
County, Arkansas more particularly described as follows:
Commencing on the Northwest Corner of said Section 25:
thence S 00°52'09"E. along the west line of said Section 25,
659.18 feet; thence N 89°26'30"E, 1419.51 feet to the Point
of Beginning thence S 01°13'12"E. 201.93 feet; thence
S 88°57'05"W, 215.00 feet; thence S 01°13'12"E, 405.21 feet to
the northerly Right of Way line of Joyce Street; thence


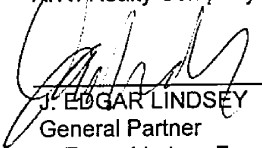
98099345

Exhibit 1- USPS Property Deed

S 88°57'05"W, along said northerly Right of Way line, 432.17 feet to a point of curvature; thence along said northerly Right of Way line along a curve to the right having a radius of 1290.45 feet, an arc length of 83.68 feet, being sustained by a chord bearing N 89°11'28"W, 83.66 feet; thence leaving said northerly Right of Way line, N 00°52'09"W, 201.95 feet; thence N 47°47'35"E, 614.99 feet; thence N 89°26'30"E, 265.33 feet to the Point of Beginning, containing 263,273 square feet (6.044 acres), more or less.

TOGETHER with all right, title and interest of the Party of the First Part in and to any streams, alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land, and together with all the improvements thereon and the appurtenances thereunto belonging and we warrant the title against all persons whomsoever.

VANTAGE SQUARE, A JOINT VENTURE

By: 
CHARLES E. SCHARLAU
Chairman
A.W. Realty Company

J. EDGAR LINDSEY
General Partner
J. E. Lindsey Family Limited Partnership

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

On this 6th day of November, 1998, before me personally appeared Charles E. Scharlau, and James E. Lindsey, to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that they executed the same and are authorized to do so on behalf of A. W. REALTY COMPANY AND J. E. LINDSEY FAMILY LIMITED PARTNERSHIP.

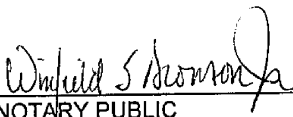

NOTARY PUBLIC

Exhibit 1- USPS Property Deed

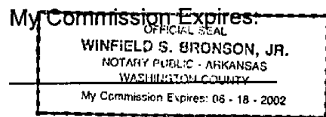


Exhibit 2 - Existing Easement Deed

RIGHT OF WAY GRANT

TRACT NO. 1

STATE OF ARKANSAS
COUNTY OF WASHINGTON

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of

and other valuable considerations to the undersigned, Arkansas Western Realty Company

paid, the receipt of which is hereby acknowledged, the said Grantor does hereby GRANT, SELL AND COVEY unto the City of Fayetteville, Arkansas, a municipal corporation (herein styled Grantee), its successors and assigns, the right of way and easement to construct, lay, remove, relay, enlarge and operate a water and/or sewer pipe line or lines, manholes, and appurtenances thereto, on, over, across, and under the following described real estate, to-wit:

A part of the NW $\frac{1}{4}$ of Section 25, Township 17 North, Range 30 West, Washington County, Arkansas, and being more particularly described as follows: A permanent water and/or sewer easement 25 feet in width, being 12.5 feet in width on either side of a centerline described as beginning at a point 765 feet South and 87 feet East of the Northwest corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of aforementioned Section 25; thence N 10° 22' 18" W 328.6 feet; thence N 49° 39' 56" E 529.0 feet; thence N 47° 33' 26" E 560.2 feet; thence N 62° 34' 17" E 206.1 feet; thence N 76° 31' 15" E 275.2 feet; thence N 33° 44' 44" E 629.2 feet; thence N 17° 11' 36" E 299.6 feet; thence N 15° 26' 20" E 28.1 feet to the point of termination, said point being approximately 471.0 feet East of the NE $\frac{1}{4}$ corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of aforementioned Section 25. Also, a temporary construction easement 25 feet wide for a period not to exceed one year from the date hereof, parallel to and contiguous with the above described permanent easement and situated on the North and East sides thereof.

FILED FOR RECORD
APR 10 1979
CLERK

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, so long as such pipe line or lines, manholes and/or appurtenances thereto shall be maintained, with ingress to and egress from the real estate first hereinabove described for the purpose of constructing, inspecting, maintaining and repairing said lines, manholes and appurtenances of Grantee above described, and the removal, renewal and enlargement of such at will, in whole or in part.

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, 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 high water, and to pay any damages which may arise to growing crops or fences from the construction, maintenance and operation as determined by three disinterested persons, one thereof to be appointed by the said Grantor; one by the said Grantee; and the third by the two so appointed as aforesaid, and the written award of such three persons shall be final and conclusive.

The Grantor agrees not to erect any buildings or structures in said right of way other than fences and said fences shall not exceed six (6) feet in height.

The Grantee shall have the right to construct additional pipe lines 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 grant in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof, this the 4th day of April, 1979.

WITNESSES:
William V. Martin, Secretary
1070

ARKANSAS WESTERN REALTY COMPANY

By Charles E. Scharlau, President

ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF WASHINGTON

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, personally appeared ARKANSAS WESTERN REALTY COMPANY by its President, Charles E. Scharlau, and Secretary William V. Martin, to me well known as the persons who executed the foregoing Right of Way Grant, and that they had executed same in behalf of said Corporation for the consideration and purpose therein mentioned and set forth:

WITNESS my hand and seal on this 4th day of April, 1979.

Donna F. Chase

Exhibit 3 - TCE Legal Descriptions and Survey

USPS Tract

TEMPORARY CONSTRUCTION EASEMENT FOR INSTALLATION

A Permanent Utility Easement (PUE) across part of the northwest quarter of the northwest quarter of Section 25, Township 17 North, Range 30 West, in the City of Fayetteville, Washington County, Arkansas, being also a part of the United States Postal Service (USPS) property as described in Washington County document 98-099345, and being more particularly described as follows:

Commencing at the southwest corner of the above-noted USPS property; thence along the west line of the said USPS property N02°33'18"E 133.36 feet to the PUE Point of Beginning; thence continuing N02°33'18"E 33.05 feet; thence leaving the said west line of the USPS property N51°42'11"E 7.97 feet; thence N51°48'49"E 434.35 feet to the north line of the USPS property, the said north line being as described in the adjacent Joyce Office Park property deed recorded at Washington County document 2012-00008571; thence along the said north line of the USPS property S87°34'34"E 38.41 feet; thence leaving the north line S51°48'49"W 463.48 feet; thence S51°42'11"W 29.57 feet to the PUE Point of Beginning, enclosing 11,692 square feet, or 0.27 acres.

TEMPORARY CONSTRUCTION EASEMENT

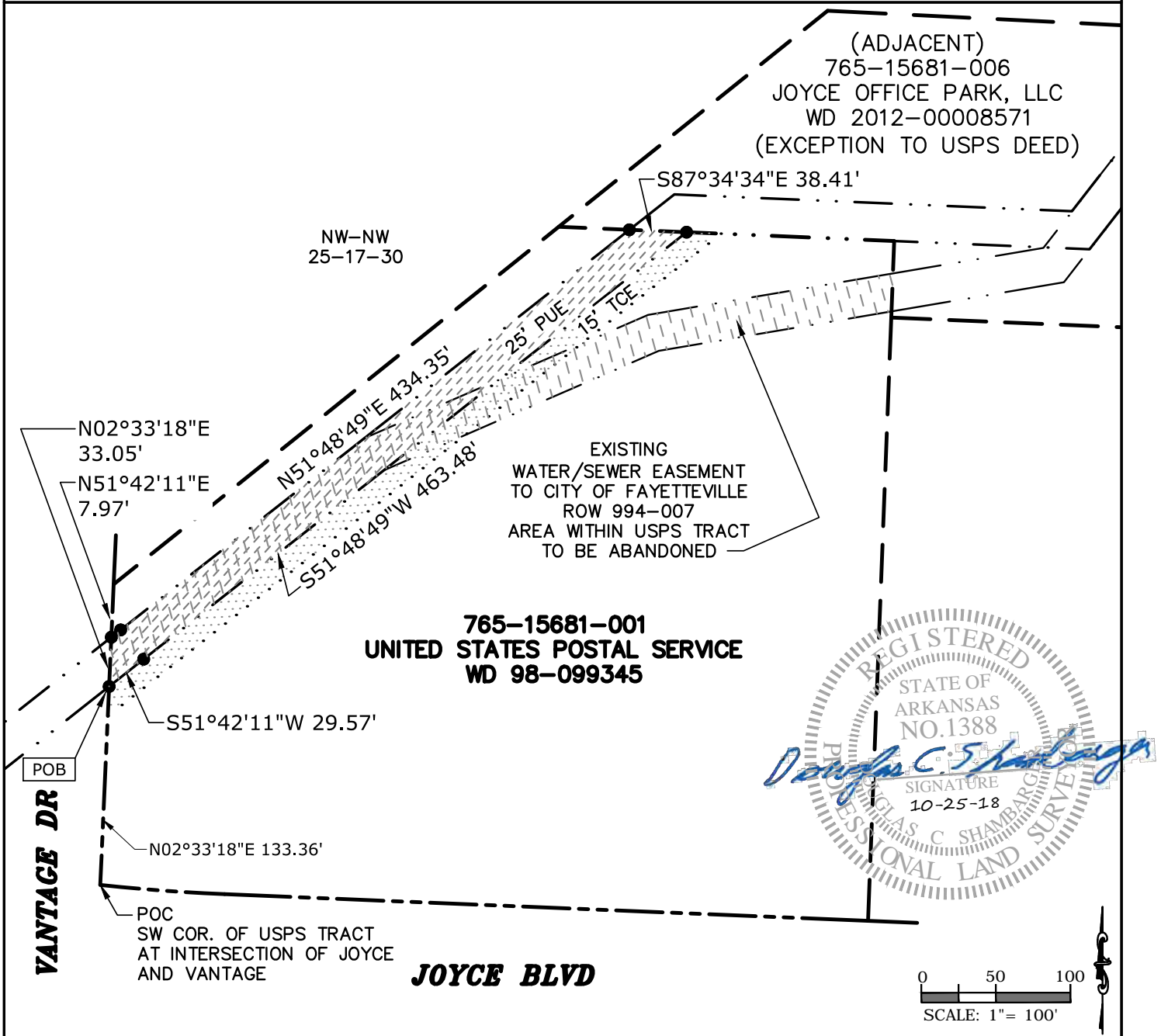
Also, a Temporary Construction Easement (TCE), 15.0 feet in width, the northwesterly lines of which are coincident with the southeasterly lines of the above-described PUE, and the side lines of which extend to and terminate at the north line of the above-noted USPS property at the north end, and the west line of the USPS property at the west end, the TCE enclosing 7,624 square feet, or 0.18 acres.

Exhibit 3 - TCE Legal Descriptions and Survey

BASIS OF BEARINGS:
ARKANSAS STATE PLANE COORDINATE SYSTEM,
NAD 83, NORTH ZONE.
(NOT A PLAT OF SURVEY)

UTILITY EASEMENT USPS EXHIBIT "A" MAP

PUE - 11,692 SQ. FT. (0.27 AC.)
TCE - 7,624 SQ. FT. (0.18 AC.)



SHEET 2 OF 3

LEGEND

	PROPOSED UTIL. EASEMENT		EXISTING RIGHT OF WAY LINE
	PROPOSED TEMP. CONST. ESMT.		EXISTING PROPERTY LINE
	TAX PARCEL LINE		LAND LINE

**CITY OF
FAYETTEVILLE**

Property Owner: UNITED STATES
POSTAL SERVICE

Drawn by : McClelland Consulting Engineers

Date: October 2018 Scale : 1" = 100'

Project No. 172138

Project Name:
KITTY CREEK
SEWER LINE

No.	Revisions	Date