**City of Fayetteville Staff Review Form**

**2022-1127**

**Legistar File ID**

**12/20/2022**

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

| Matt Casey | 11/30/2022 | ENGINEERING (621) |
|---|---|---|
| **Submitted By** | **Submitted Date** | **Division / Department** |

## Action Recommendation:

Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor Project.

## Budget Impact:

| 4602.860.7218-5805.00 | Street Project 2019 Bonds Fund |
|---|---|
| Account Number | Fund |
| 46020.7218.1020 | Midtown Corridor |
| Project Number | Project Title |

| | | | | |
|---|---|---|---|---|
| **Budgeted Item?** | Yes | Current Budget | $ | 136,270.00 |
| | | Funds Obligated | $ | 3,500.00 |
| | | Current Balance | **$** | **132,770.00** |
| **Does item have a cost?** | Yes | Item Cost | $ | 50,000.00 |
| **Budget Adjustment Attached?** | No | Budget Adjustment | $ | - |
| | | Remaining Budget | **$** | **82,770.00** |

*V20210527*

**Purchase Order Number:** _____ **Previous Ordinance or Resolution #** _____

**Change Order Number:** _____ **Approval Date:** _____

**Original Contract Number:** _____

**Comments:**

CITY OF FAYETTEVILLE ARKANSAS

# CITY COUNCIL MEMO

**MEETING OF DECEMBER 20, 2022**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff
Chris Brown, Public Works Director

**FROM:** Matt Casey, Engineering Design Manager

**DATE:** November 29, 2022

**SUBJECT:** **Approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor Project.**

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**RECOMMENDATION:**
Staff recommends City Council approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor Project.

**BACKGROUND:**
The Midtown Corridor is a project in the 2019 Transportation Bond Program and includes several different components. The corridor is 2.3 miles in length and runs in an east-west direction through a flat part of the middle of the city from I-49 at Porter to College Avenue at Poplar Street. The project includes vehicular improvements to the intersection of Porter Road and I-49 with a roundabout to improve the traffic flow for the large volume of traffic from the west of I-49 turning onto the interstate heading north. Along Porter Road and Deane Street from the interstate to Garland Avenue the project includes street improvements with new turn lanes and drainage as well as separated pedestrian and bicycle facilities. The street, drainage pedestrian, and bicycle improvements will continue along Sycamore Street from Garland Avenue to the Razorback Greenway. From the Greenway to College Avenue, the project will include multi-use trail construction along the Poplar Street alignment. Finally, a connection to the south from Poplar Street to Gregory Park was included in the design.

The first phase of this corridor included the improvements to Porter Road and Deane Street from I-49 to the east side of the new fire station. The design for this phase was completed in January of 2022. In February of 2022, the City Council approved a change order with Flintco to include this phase in the Police Headquarters Project. Construction is currently underway and is expected to be complete in early 2023.

The design for the remainder of this corridor is complete and a Construction Manager at Risk contract with Crossland Heavy Contractors was approved by the City Council at the August 16th city council meeting. Crossland Heavy is currently working on the bidding of the project and is expected to have a guaranteed maximum price for consideration by the City Council in early 2023. Construction is expected to begin in March of 2023.

**DISCUSSION:**
Right of way and easement acquisition began for this project in January of 2022. Staff has been successful in acquiring all but a few of the properties for this project. The owner of this property at 1641 N. Oakland Avenue has refused to sign right-of-way and easement documents. This is one of the last of the 73 properties to be acquired for this portion of the project. Staff will continue to negotiate with this property owner to avoid condemnation if possible. However, it is imperative that the right of way be acquired in a timely manner so as not to delay the construction. The City is acquiring 2,752 square feet (.063 acres) of utility easement, 1,443 square feet (.033 acres) of temporary construction easement and 1,009 square feet (.033 acres) of drainage easement from this property.

**BUDGET/STAFF IMPACT:**
The corridor improvements are funded by the 2019 Transportation Bond Program. The agenda item staff review form indicates $50,000.00 as the cost of this request. It should be noted that this is an estimate, based on the appraised values of the properties, and that the final cost is subject to negotiation with the property owners or by court order. The appraised value will be deposited into the Registry of the Circuit Court as just compensation when the condemnation complaint is filed for each property.

**Attachments:**
Correspondence History
ROW and Easement Exhibits
Vicinity Map

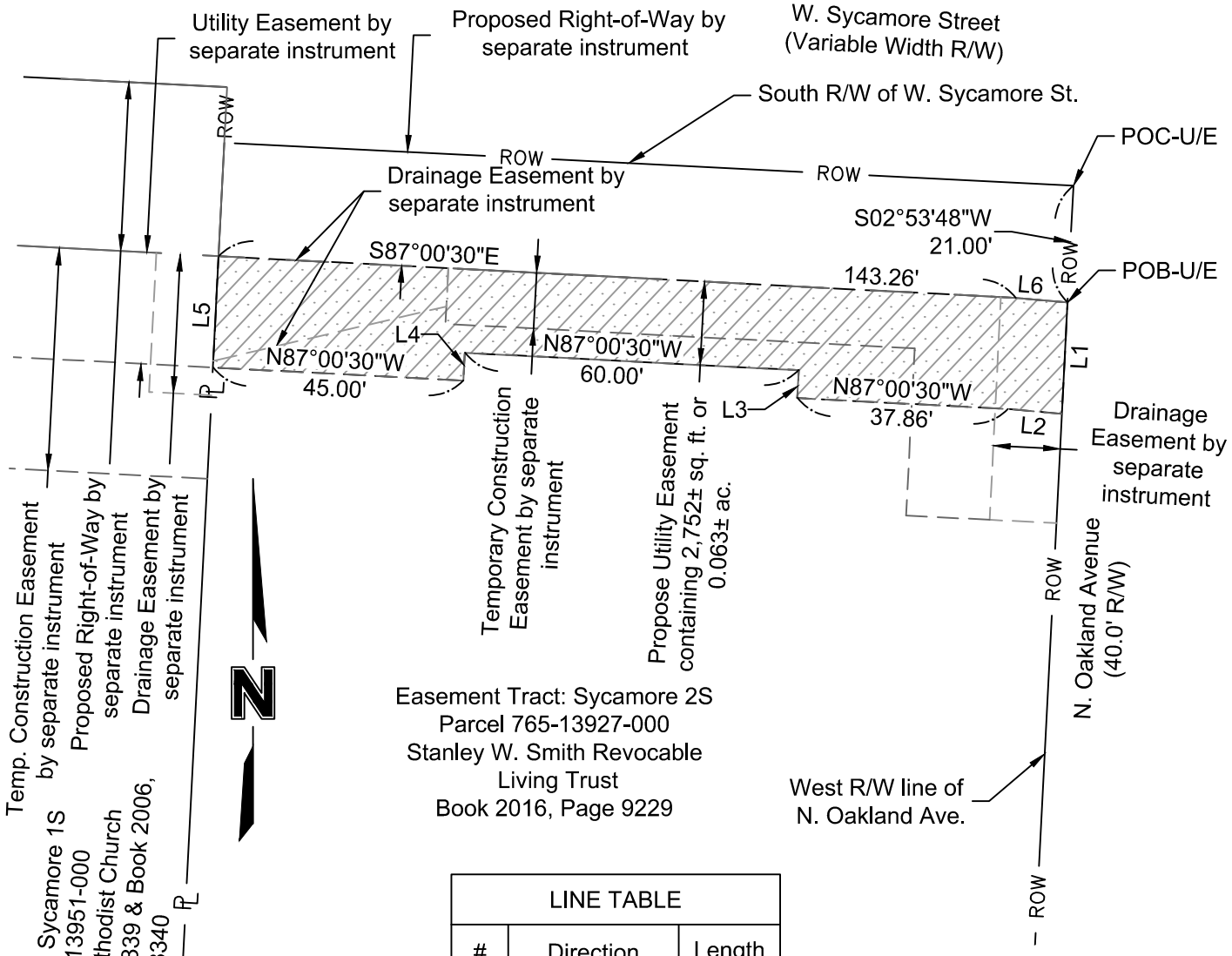
MIDTOWN CORRIDOR
1641 N. OAKLAND AVE.
112
PEACHTREE DR
VAN GOGH PL
CHESTNUT AVE
POPLAR
ST
BIRCH AVE
BEL - AIR DR
ASH
ASH
JANICE AVE
DAVIS
NOELLE AVE
KELLY
LYNN
PL
N MAXWELL DR
SYCAMORE
HICKORY
PROPERTY LOCATION
MOAN PLACE
DRIVE
MARTHA DR
SPRUCE
MAXWELL DR
AVE
ENDRIX
ADDINGTON
CARTER
GARLAND
MT COMFORT
LAWSON
AVE
OAKLAND
AVE
LEVERETT
BERNICE
DR
DAWN
BECK DR
AVE
JAMES
HOLLY
HOLLY
HAZEL
ROAD
GREGG
PATRICIA
LN
W
NORTH
HUGHES
ADAMS
AVE
BERRY
AVE
AVE
AVE

DWG: F:\2019\3501-4000\019-3988\40-Design\Survey\SRVY\Sheets\SYCAMORE\UTILITY EASEMENTS\V_ESMT_0193988-PARCEL 765139270000-SYCAMORE UE2S.dwg USER: dchance
DATE: May 06, 2022 12:23pm XREFS: V_XTOPO_0193988_SYCAMORE V_PESMT_0193988_SYCAMORE V_XBOU_0193988_SYCAMORE

LEGEND

Permanent Utility Easement (U/E)
ROW — Existing Right-of-Way line
℄ — Existing Property Line

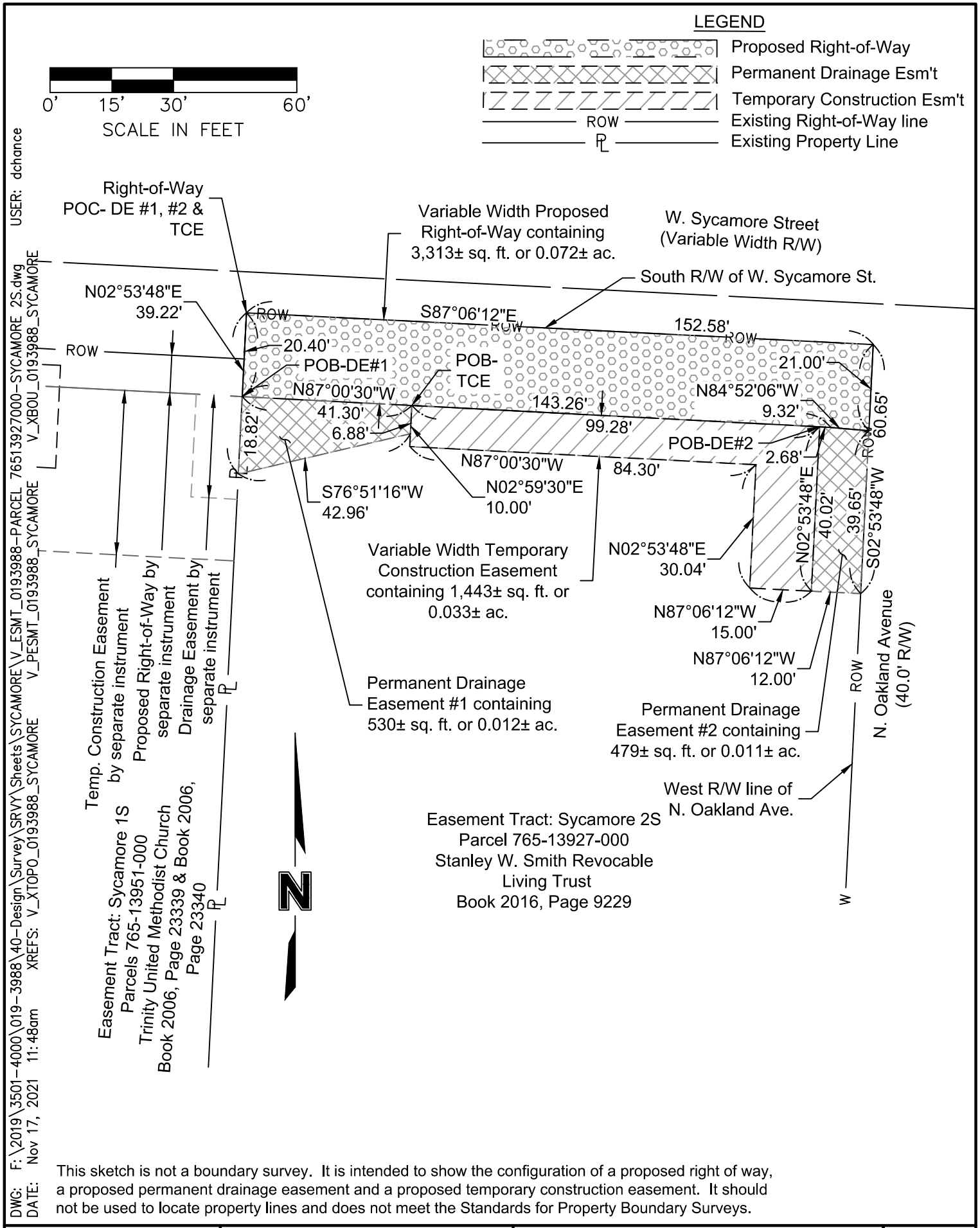
0' 15' 30' 60'
SCALE IN FEET




| LINE TABLE | | |
|---|---|---|
| # | Direction | Length |
| L1 | S02°53'48"W | 20.02' |
| L2 | N84°52'06"W | 9.73' |
| L3 | N02°59'30"E | 5.00' |
| L4 | S02°59'30"W | 5.00' |
| L5 | N02°53'48"E | 20.00' |
| L6 | S84°52'06"E | 9.32' |

This sketch is not a boundary survey. It is intended to show the configuration of a proposed permanent utility easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

| | | | |
|---|---|---|---|
| PROJECT NO: 019-3988 | EASEMENT DRAWING - STREET IMPROVEMENT - SYCAMORE STREET PARCEL NO. 765-13927-000 STANLEY W. SMITH REVOCABLE TRUST | olsson | EXHIBIT |
| DRAWN BY: DRC | | 302 East Millsap Road Fayetteville, AR 72703 TEL 479.443.3404 | 1 |
| DATE: 05.06.2022 | | | |




DWG: F:\2019\3501-4000\019-3988\40-Design\Survey\SRVY\Sheets\SYCAMORE\V_ESMT_0193988-PARCEL 765139270000-SYCAMORE 2S.dwg USER: dchance
DATE: Nov 17, 2021 11:48am XREFS: V_XTOPO_0193988_SYCAMORE V_PESMT_0193988_SYCAMORE V_XBOU_0193988_SYCAMORE

This sketch is not a boundary survey. It is intended to show the configuration of a proposed right of way, a proposed permanent drainage easement and a proposed temporary construction easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

| | | | |
|---|---|---|---|
| PROJECT NO: 019-3988 | EASEMENT DRAWING - STREET IMPROVEMENT - SYCAMORE STREET PARCEL NO. 765-13927-000 STANLEY W. SMITH REVOCABLE TRUST | olsson | EXHIBIT |
| DRAWN BY: DRC | | 302 East Millsap Road Fayetteville, AR 72703 TEL 479.443.3404 | 1 |
| DATE: 11.16.21 | | | |

Project: W Sycamore Street Improvements
Parcel No. 765-13927-000
Tract No. 2S

# DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016,** hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do 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 and a temporary construction and grading easement to excavate, construct, maintain, repair and/or replace an earthen retaining levee, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.
ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.
LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87º05’58” East 465.00 feet; thence South 02º53’48” West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the “TRUE POINT OF BEGINNING” of this description; thence S87°06’12”E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48”W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52’06”W, 9.32 feet; thence N87º00’30”W, 143.26 feet to said West line; thence N02º53’48”E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A permanent drainage easement lying South of and adjacent to the above described proposed Right-of-Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor’s above described property; thence S02°53'48"W along said West line, a distance of 20.40 feet for a TRUE POINT OF BEGINNING; thence departing said West line S87°00'30”E, a distance of 41.30 feet; thence S02°59’30”W, a distance of 6.88 feet; thence S76°51’16”W, a distance of 42.96 feet to a point in said West line; thence N02°53’48”E along said West line, a distance of 18.82 feet to the POINT OF BEGINNING, containing 530 square feet or 0.012 acres, more or less.

AND

A permanent drainage easement lying South of and adjacent to the above described proposed Right-of-Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor’s above described property; thence S02°53'48"W along said West line, 20.40 feet; thence departing said West line S87°00'30”E, 140.58 feet for a TRUE POINT OF BEGINNING; thence continuing S87°00'30”E, 2.68 feet; thence S84°52’06”E, 9.32 feet to a point in the West Right-of-Way line of N. Oakland Avenue, as now established; thence S02°53'48”W along said West Right-of-Way line, 39.65 feet; thence departing said West Right-of-Way line N86°06’12”W, 12.00 feet; thence N02°53’48”E, 40.02 feet to the POINT OF BEGINNING, containing 497 square feet or 0.011 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, 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 pay any damages which may arise to existing fences, holding Grantor harmless if damage occurs during construction or maintenance of the above described drainage structure.

The Grantor agrees not to erect any buildings or permanent structures in said permanent easement.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages because 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 _____ day of _____, 2022.

**Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**

BY: _____ _____
**Stanley W. Smith, Trustee**

---

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) ss.
COUNTY OF _____ )

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who 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 _____ day of _____, 2022.

MY COMMISSION EXPIRES:

_____
Notary Public

Project: W Sycamore Street Improvements
Parcel No. 765-13927-000
Tract No. 2S

# GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) 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 the public utilities holding a franchise granted by said City of Fayetteville, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of 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, traffic signal poles and equipment, 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: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.
ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.
LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87º05’58” East 465.00 feet; thence South 02º53’48” West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the “TRUE POINT OF BEGINNING” of this description; thence S87°06’12”E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48”W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52’06”W, 9.32 feet; thence N87º00’30”W, 143.26 feet to said West line; thence N02º53’48”E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A permanent utility easement across the Northern portion of Grantor’s above described property, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the East line of Grantor’s above described property; thence departing said South Right-of-Way line S02°53'48"W along said East line, 21.00 feet for a TRUE POINT OF BEGINNING; thence continuing along said East line S02°53'48"W, 20.02 feet; thence departing said East line N84°52’06”W, 9.73 feet; thence N87°00'30”W, 37.86 feet; thence N02°59’30”E, 5.00 feet; thence N87°00’30”W, 60.00 feet; thence S02°59’30”W, 5.00 feet; thence N87°00’30”W, 45.00 feet to a point in the West line of said Grantor’s property; thence N02°53’48”E along said West line, 20.00 feet; thence S87°00’30”E, 143.26 feet; thence S84°54’06”E, 9.32 feet to the POINT OF BEGINNING, containing 2,752 square feet or 0.063 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 and the public utilities holding a franchise granted by said City of Fayetteville, 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 and its associated franchisees, which hereby agree 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 not to erect any buildings or structures in said permanent easement. This easement cannot be used for above-ground micro-wireless facilities, small wireless facilities (including associated poles or support structures), or any other similar wireless communications facilities.

The Grantee and its associated franchisees 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 on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the _____ day of _____, 2022.

**Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**

BY: _____ _____
**Stanley W. Smith, Trustee**

---

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) ss.
COUNTY OF _____ )

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who 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 _____ day of _____, 2022.

MY COMMISSION EXPIRES:

_____
Notary Public

Project: W Sycamore Street Improvements
Pt Parcel No. 765-13927-000
Tract No. 2S

# WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016,** hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87º05'58" East 465.00 feet; thence South 02º53'48" West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the "TRUE POINT OF BEGINNING" of this description; thence S87°06'12"E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48"W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52'06"W, 9.32 feet; thence N87º00'30"W, 143.26 feet to said West line; thence N02º53'48"E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

TO HAVE AND TO HOLD the said lands and appurtenances hereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And the said Grantor hereby covenants that it is lawfully seized of said lands and premises; that the same is unencumbered, and that the Grantor will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS the execution hereof on this _____ day of _____, 2022.

REVENUE STAMPS AFFIDAVIT

The foregoing deed has the correct amount of Revenue Stamps affixed to it or is **exempt** from such stamps.

Signed: _____
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

**Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**

BY: _____
**Stanley W. Smith, Trustee**

---

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) ss.
COUNTY OF _____ )

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who 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 _____ day of _____, 2022.

MY COMMISSION EXPIRES:

_____
Notary Public

Project: W Sycamore Street Improvements
Parcel No. 765-13927-000
Tract No. 2S

# TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, hereinafter called GRANTOR, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, do 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 temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for construction of a trail, to-wit:

PROPERTY DESCRIPTION: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.
ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.
LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87º05’58” East 465.00 feet; thence South 02º53’48” West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the “TRUE POINT OF BEGINNING” of this description; thence S87°06’12”E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48”W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52’06”W, 9.32 feet; thence N87º00’30”W, 143.26 feet to said West line; thence N02º53’48”E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary easement lying South of, adjacent to and parallel with, the above described Proposed Right of Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor’s above described property; thence S02°53'48"W along said West line, 20.40 feet; thence departing said West line S87°00'30”E, 41.30 feet for a TRUE POINT OF BEGINNING; thence continuing S87°00'30”E, 99.28 feet; thence S02°53’48”W, 40.02 feet; thence N86°06’12”W, 15.00 feet; thence N02°53’48”E, 30.04 feet; thence N87°00’30’W, 84.30 feet; thence N02°59’30”E, 10.00 feet to the POINT OF BEGINNING, containing 1,443 square feet or 0.033 acres, more or less. This Temporary Construction Easement shall terminate upon completion of the street construction and has been accepted by the City of Fayetteville, Arkansas.

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.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure(s) which may be located or under construction within said temporary construction easement area during the construction of this project.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, 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 consideration first above recited as being paid to the 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 easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 2022.

**Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**

BY: _____ _____
**Stanley W. Smith, Trustee**

---

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) ss.
COUNTY OF _____ )

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who 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 _____ day of _____, 2022.

MY COMMISSION EXPIRES:

_____
Notary Public

Case History

Stanley W. Smith Revocable Living Trust-Case History
RE: 1641 N Oakland Avenue

1/12/2022 An offer was mailed to Mr. Smith requesting 3313 square feet of additional right of way ($8090), 1027 square feet of permanent drainage easement ($630) and 1443 square feet of temporary construction and grading easement, totaling $9070.00 and based on the Washington County Assessor's 2022 assessed value of the land only for this tract, with the right of way valued at fee simple and the drainage easement at 25% and TCE at 10%.

3/4/2022 MC received an email from David Fleming, the property manager of this tract. He indicated that their concern was drainage along Oakland and wanted to meet. It appears that they did meet on March 8.

3/10/2022 A revised offer was mailed to Mr. Smith and emailed to Mr. Fleming, adding $5500 for landscaping damages for the removal of 4 pine trees within the proposed right of way, to the original offer of $9070.00 for a total new offer of $14,570.00.

Mr. Smith called HJ and said he would do whatever Mr. Fleming told him to do. HJ let him know that the signature would have to come from him, not Mr. Fleming, who is not the Trustee of the Trust.

5/11/2022 A second revised offer was mailed to Mr. Smith and emailed to Mr. Fleming when we became aware of the fact that we would have to also acquire a small amount of general utility easement to move some utilities out of the right of way. This easement is in the same general location as the drainage easement and mostly "stacked on top" of easement we've already requested. The offer for 2752 square feet of general utility easement was based on the same base value as the first offer at a 25% rate for an addition of $1680, taking the new offer to $16,250.00.

7/26/2022 HJ emailed Mr. Fleming to get an update on the status of the easements since Mr. Smith has turned everything over to D. Fleming. He sent an email back and asked HJ to stop contacting Mr. Smith until the City has agreed to repair Oakland and indicated that if the City agreed to make all drainage repairs to the east side of the property, they would sign all the paperwork. MC responded and let him know that HJ would be responding with the next steps if they were refusing to cooperate.

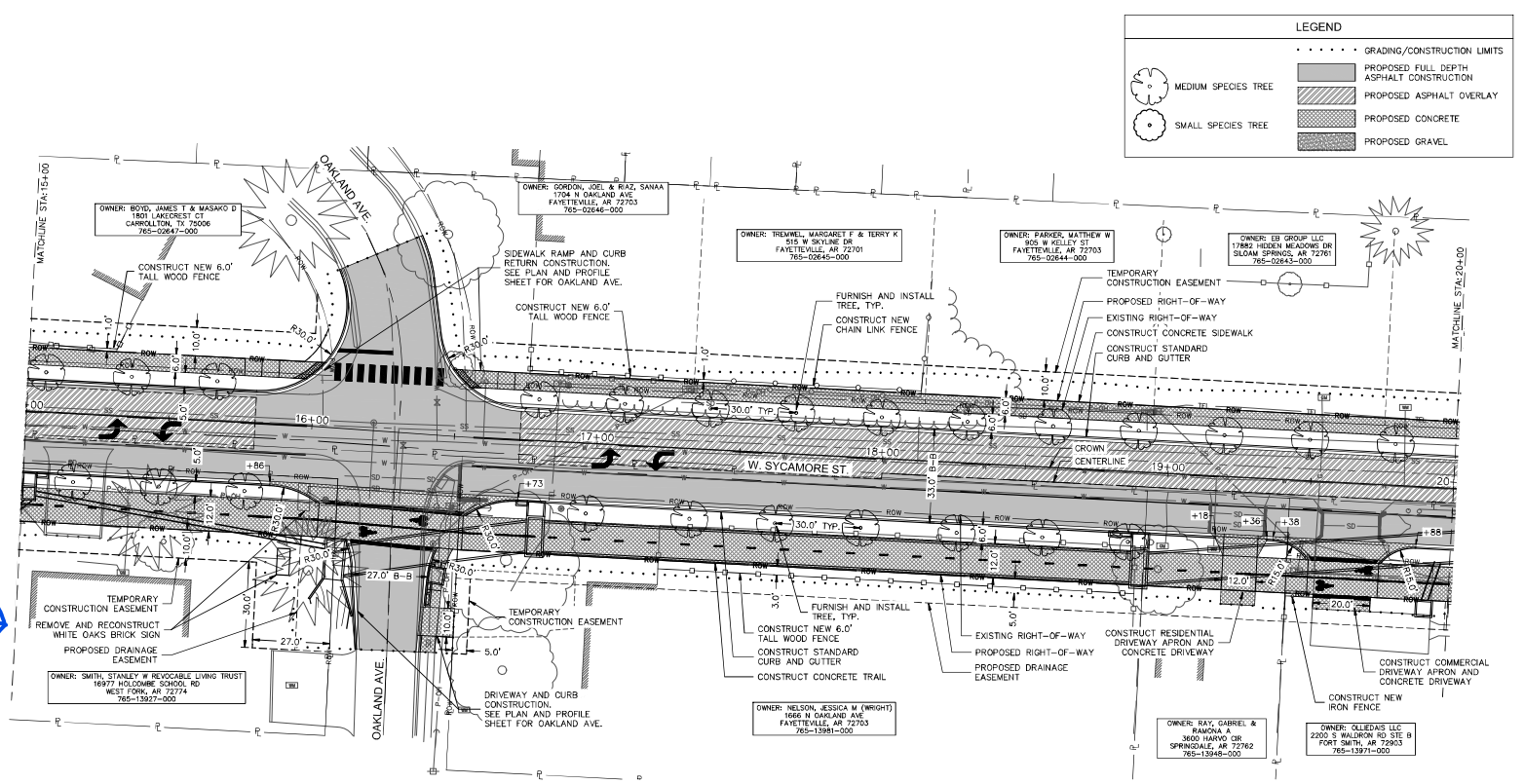
7/28/2022 HJ mailed an Appraisal Notification Letter indicating that negotiations and discussions had broken down with Mr. Smith's agent and we were ordering an appraisal to present a final offer. We also stated that this would be sent to Council should this final offer be declined, and the Condemnation Brochure was mailed along with it. A copy was mailed to Mr. Fleming's office as well as the entire packet of documents for their review.

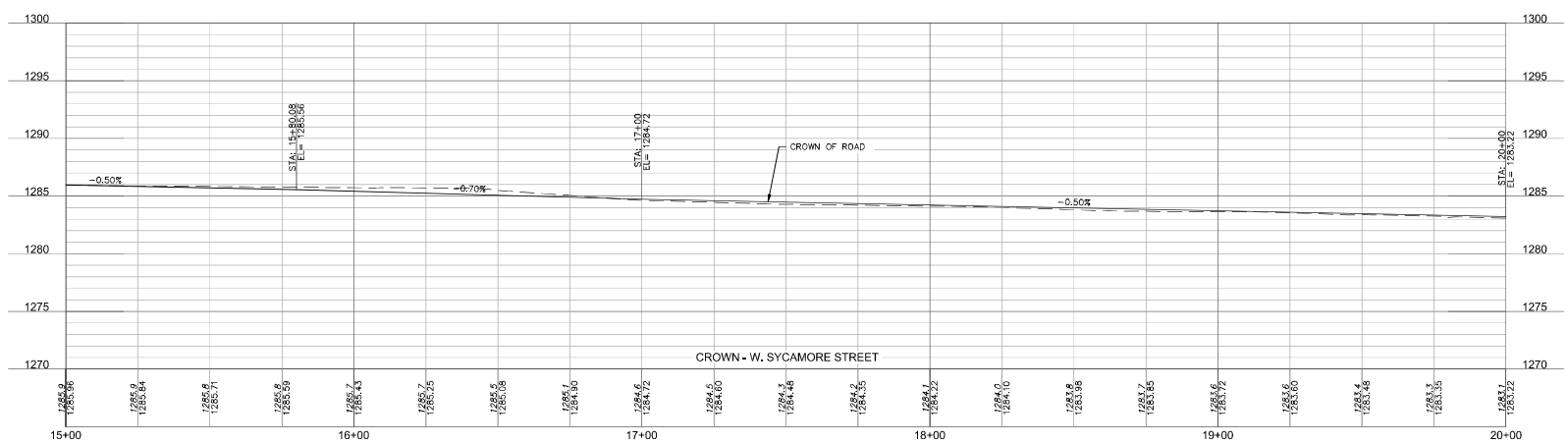
10/25/2022 The appraisal was received from Holland Commercial Appraisal and Valuation Services.

10/27/2022 HJ mailed a final offer to Mr. Smith and emailed the same to Mr. Fleming, based on Holland's Appraisal: 3313 square feet of right of way ($36,000), 2752 square feet of general utility easement ($6,660), 1,027 square feet of drainage easement ($2,740), 1443 square feet of temporary construction and grading easement ($1,600) and $3,000.00 for landscaping damages for 4 pine trees for a total offer of $50,000. They had until November 8, 2022 to respond. They did not.

11/14/2022 HJ Mailed and emailed the Notification Letter to both Mr. Smith and Mr. Fleming to inform them of the December 20, 2022 Council meeting.

11/28/2022 Mr. Fleming emailed HJ regarding an existing easement that the City is failing to maintain or repair on their property on the east side at Oakland. There is no easement found filed or noted on the City's GIS therefore maintenance would be the owner's responsibility.




olsson
302 East Millsap Road
Fayetteville, AR 72703
TEL 479.443.3404
www.olsson.com

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| REV. NO. | DATE | REVISIONS DESCRIPTION | BY |
|---|---|---|---|

REVISIONS

PLAN AND PROFILE
W. SYCAMORE STREET

MIDTOWN MULTIMODAL CORRIDOR
DEANE STREET AND SYCAMORE STREET

FAYETTEVILLE, ARKANSAS

2021

drawn by: ELH
checked by: CBB
approved by: CBB
QA/QC by: CBB
project no.: 019-3988
drawing no.: W_SYCAMORE_0193988
date: 10/18/2021

SHEET
38 of 171

DWG: F:\2019\3501-4000\019-3988\40-Design\AutoCAD\Final Plans\Midtown Trail\Sheets_DS\PLAN&PROFILE\T_RPP_SYCAMORE_0193988.dwg USER: ehall
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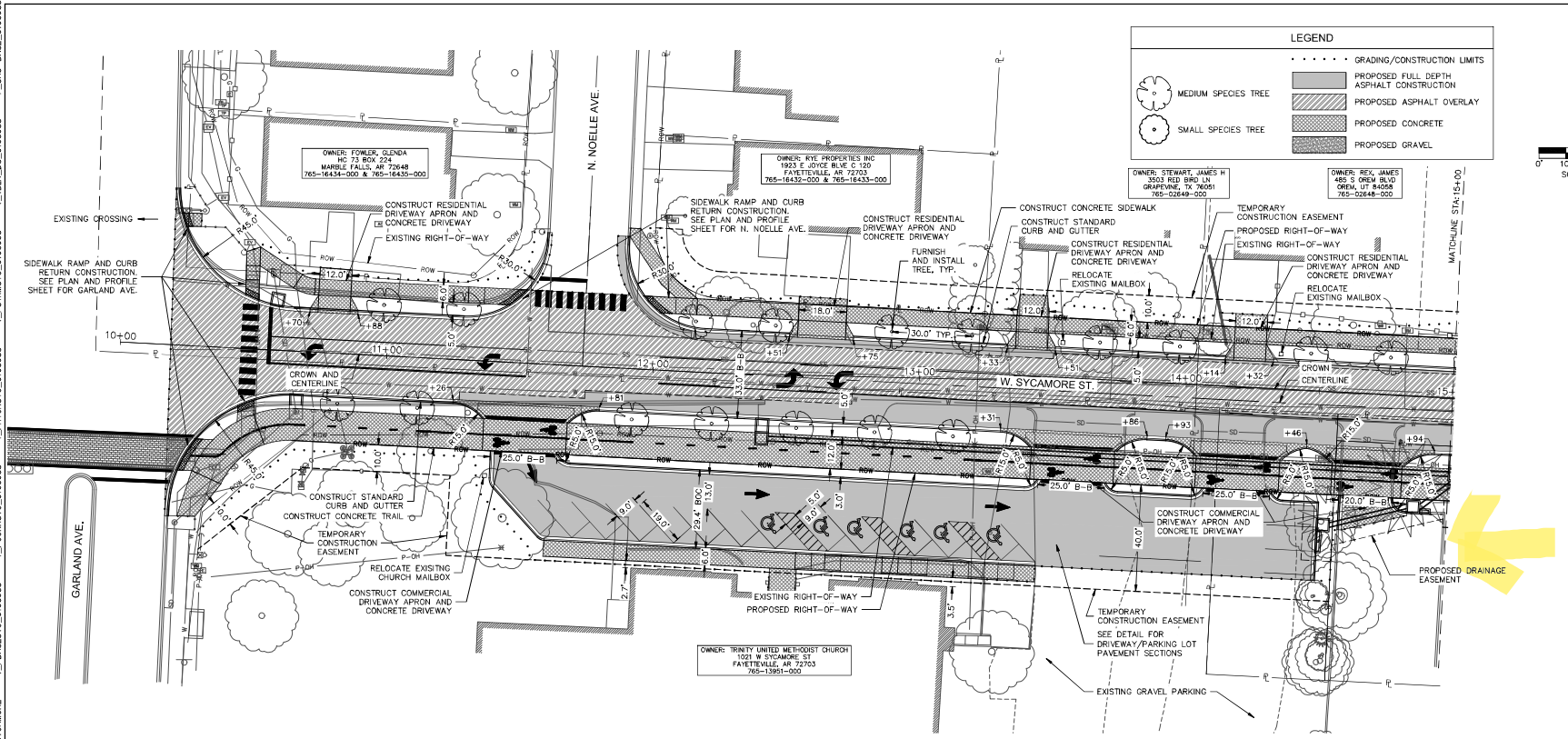


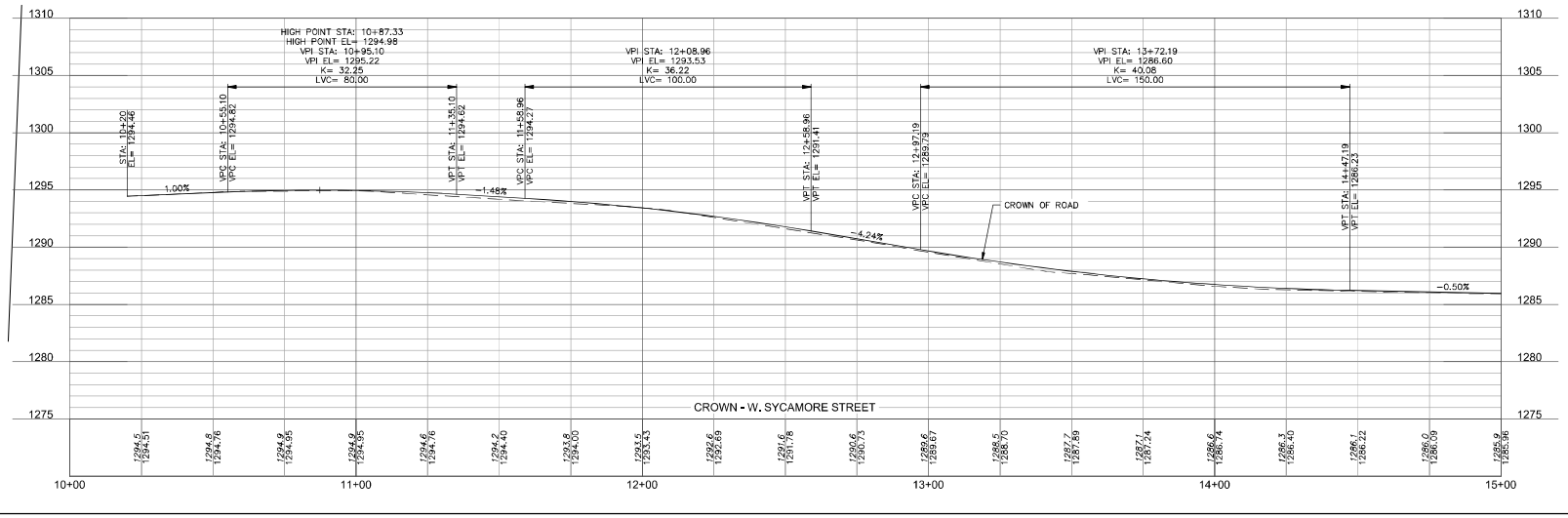


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REVISIONS

| NO. | DATE | REVISIONS DESCRIPTION | BY |
|---|---|---|---|
| N/A | | | |

PLAN AND PROFILE
W. SYCAMORE STREET

MIDTOWN MULTIMODAL CORRIDOR
DEANE STREET AND SYCAMORE STREET

FAYETTEVILLE, ARKANSAS

2021

| | |
|---|---|
| drawn by: | ELH |
| checked by: | CBB |
| aporoved by: | CBB |
| QA/QC by: | CBB |
| project no.: | 019-3988 |
| drawing no.: | SYCAMORE_0193988 |
| date: | 10/18/2021 |

SHEET
37 of 171

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