

ORDINANCE NO. _____

AN ORDINANCE APPROVING A WAIVER REQUEST FOR REQUIREMENTS OF STREET TREES FOR CERTAIN REAL PROPERTY LOCATED AT 4331 EAST 43RD STREET IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, a request has been made seeking a waiver of the street trees requirements for property located at 4331 East 43rd Street in the City of North Little Rock, Arkansas (see letter from Mr. Chris East of Cromwell with site map and Encroachment Agreement attached hereto, collectively, as Exhibit "A"); and

WHEREAS, the applicant, Cromwell Architects Engineers, appeared before the North Little Rock Planning Commission at a regularly scheduled meeting thereof held on July 12, 2016, and requested a waiver of requirements for street trees due to inability to plant trees within a utility easement and Encroachment Agreement with Entergy Arkansas, Inc.; and

WHEREAS, the waiver of the street trees requirement, specifically Section 15.4.E (Street Trees) of the Zoning Ordinance, was reviewed and supported by the Planning Commission at July 12, 2016 meeting (6 affirmative votes; 3 absent) with the Commission directing that the waiver request be sent to City Council for approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That a waiver of requirements for street trees (Section 15.4.E of the Zoning Ordinance) on property located at 4331 East 43rd Street is hereby approved, said property being more particularly described as follows:

Lot 1, McCain East Business Park in the City of North Little Rock, Pulaski County, Arkansas. (See maps attached hereto as Exhibits "B" and "C".)

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 3: That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 4: It is hereby found and determined that there is an existing utility easement with restrictions for the subject property and that prevent the placement of street trees in the easement, that the waiver of the requirement as provided for herein is

immediately necessary in order to insure the proper and orderly growth of this land and the proper and orderly growth of the City of North Little Rock, Arkansas, and being necessary for the immediate preservation of the public health, safety and welfare, THEREFORE, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSORS:

ATTEST:

Murry Witcher

Alderman Murry Witcher

Diane Whitbey, City Clerk

Charlie Hight

Alderman Charlie Hight

APPROVED AS TO FORM:

C. Jason Carter

C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED <u>11:33</u> A.M. _____ P.M.
By <u>J. Carter</u>
DATE <u>6/20/17</u>
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas
RECEIVED BY <u>T. McGraw</u>



CROMWELL

architects engineers 101 south spring street little rock, ar 72201 501.372.2900 cromwell.com

June 13, 2017

North Little Rock City Council
120 Main Street
North Little Rock, AR 72115

RE: Landscaping Waiver for Ambulatory Surgery Center

Dear Mayor and Alderpersons,

We are requesting a landscaping wavier for the new Ambulatory Surgery Center at 4331 East 43rd Street on behalf of the owner. The building is complete, and meets all North Little Rock rules and restrictions.

According to the North Little Rock landscaping ordinance, trees are required along the frontage of 43rd and Gage streets. However, due to a restriction by the utility (Entergy), we are prohibited from placing trees in the easement along 43rd and Gage Streets. We are currently stuck between the city requirements and the utility requirements and unable to receive a certificate of occupancy to operate the building.

Will the City of North Little Rock please provide a waiver for the landscaping requirements within the utility easement?

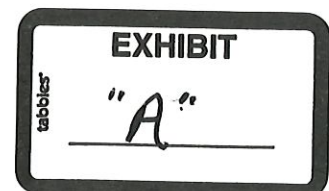
Please see attached drawing indicating the site, utility easement and the trees in question. You will be able to see the utility easement covers the entire southeast corner of the site, terminating in a sub- station on the opposite side of the street.

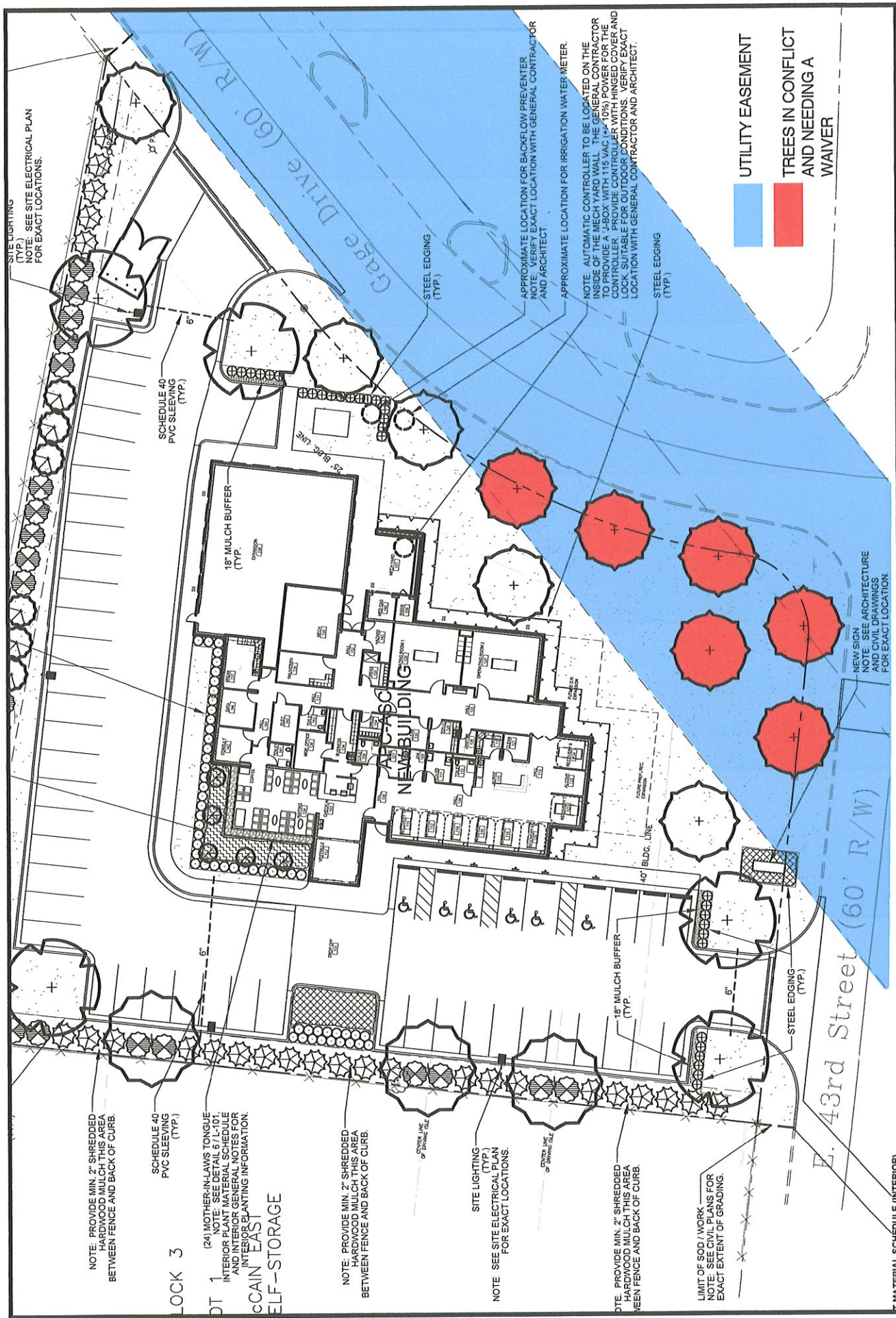
Please let me know if you have any questions or would like to discuss anything further.

Thank you,

Chris East

Chris East, AIA





SITE LIGHTING (TYP.)
NOTE: SEE SITE ELECTRICAL PLAN FOR EXACT LOCATIONS.

SCHEDULE 40 PVC SLEEVING (TYP.)

LOCK 3
NOTE: PROVIDE MIN. 2" SHREDED HARDWOOD MULCH THIS AREA BETWEEN FENCE AND BACK OF CURB.
SCHEDULE 40 PVC SLEEVING (TYP.)
(24) MOTHER-IN-LAWS TONGUE INTERIOR PLANT MATERIAL SCHEDULE 40 PVC SLEEVING (TYP.)
SCAINE EAST SELF-STORAGE

NOTE: PROVIDE MIN. 2" SHREDED HARDWOOD MULCH THIS AREA BETWEEN FENCE AND BACK OF CURB.

SITE LIGHTING (TYP.)
NOTE: SEE SITE ELECTRICAL PLAN FOR EXACT LOCATIONS.

NOTE: PROVIDE MIN. 2" SHREDED HARDWOOD MULCH THIS AREA BETWEEN FENCE AND BACK OF CURB.

LIMIT OF SOD / WORK
NOTE: SEE CIVIL PLANS FOR EXACT EXTENT OF GRADING.

Gage Drive (60' R/W)

STEEL EDGING (TYP.)

APPROXIMATE LOCATION FOR BACKFLOW PREVENTER
NOTE: VERIFY EXACT LOCATION WITH GENERAL CONTRACTOR AND ARCHITECT

APPROXIMATE LOCATION FOR IRRIGATION WATER METER.
NOTE: AUTOMATIC CONTROLLER TO BE LOCATED ON THE INSIDE OF THE MECH. YARD WALL. THE GENERAL CONTRACTOR TO PROVIDE A 4-BOX WITH 115 VAC (1-2 (10%) POWER FOR THE CONTROLLER. PROVIDE CONTROLLER WITH HINGED COVER AND LOCK SUITABLE FOR OUTDOOR CONDITIONS. VERIFY EXACT LOCATION WITH GENERAL CONTRACTOR AND ARCHITECT.

STEEL EDGING (TYP.)

UTILITY EASEMENT
TREES IN CONFLICT AND NEEDING A WAIVER

NEW SIGN
NOTE: SEE ARCHITECTURE AND CIVIL DRAWINGS FOR EXACT LOCATION

E. 43rd Street (60' R/W)

1 MATERIAL SCHEDULE (INTERIOR)



LANDSCAPE PLAN DIAGRAM WITH EASEMENT

ARKANSAS PAIN CENTER
NORTH LITTLE ROCK, AR

1

6.13.17

Prepared By:
Janan Honeysuckle
Entergy Arkansas, Inc.
Legal Services Department
425 W. Capitol Ave., 27A
Little Rock, AR 72201
(501) 377-5886

ENCROACHMENT AGREEMENT

This Encroachment Agreement (the "Agreement") is executed by and between Entergy Arkansas, Inc., an Arkansas corporation ("Entergy"), formerly known as Arkansas Power & Light Company; and BLK Properties, LLC ("Owner") on this 29th day of September, 2016, to be effective in accordance with the terms set forth below (the "Effective Date"):

RECITALS

WHEREAS, by virtue of the Right-of-Way Permit filed for record on June 28, 1955 in the Office of the Circuit Clerk and Ex-Officio Recorder of Pulaski County, Arkansas, in Book No. 589, at Page No. 227, respectively (collectively referred to hereinafter as the "Right-of-Way Permit"), Entergy has been granted certain rights-of-way for the purpose of building and maintaining transmission lines over, upon and across certain real property situated in Pulaski County, Arkansas, as more particularly described therein (the "Right-of-Way Area");

WHEREAS, Owner desires to operate and maintain an sewer line, water line and gas line to be used in connection with an Ambulatory Surgery Center.

WHEREAS, an sewer line, water line and gas line is to be placed within the Right-of-Way Area at the locations particularly described on Exhibit "A" and "A-1", attached hereto; and

WHEREAS, Entergy has no objection to the installation, maintenance, repair, operation, use, replacement and/or removal of the improvements depicted on Exhibit "A" and "A-1", ("Facilities") in the Right-of-Way Area described in Exhibit "A" and "A-1", provided that Owner,

its successors, assigns, agents, employees, contractors and subcontractors, comply with the provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreements and benefits of the parties herein set forth, the receipt and sufficiency of all of which is hereby acknowledged, Entergy and Owner hereby agree as follows, with the foregoing Recitals being hereby incorporated herein by reference.

1. Entergy does not object to the installation, maintenance, repair, operation, use, replacement and/or removal of the Facilities by Owner within the Right-of-Way Area at the locations particularly described on Exhibit "A" and "A-1", attached hereto.

2. This Agreement shall not in any way diminish or modify the rights granted to Owner and Entergy in the Right-of-Way Permit, except that Entergy shall not be entitled to assert that the Facilities are initially installed within the Right-of-Way Area at the locations particularly described on Exhibit "A" and "A-1", constitutes an obstruction or hazard under the Right-of-Way Permit and must be removed or materially altered or modified. This Agreement shall not in any way diminish or modify Entergy's right to challenge, contest, or protest any further encroachments or uses within the Right-of-Way Area or material modifications of the location or placement of the Facilities within the Right-of-Way Area agreed to herein. A material modification shall mean any modification to the location or placement of the Facilities that materially diminishes Entergy's rights of access within the Right-of-Way Area granted to it in the Right-of-Way Permit or that materially diminishes Entergy's rights to modify, enlarge, replace, operate, or maintain its Facilities in any manner permitted by the Right-of-Way Permit or that in any manner violates any applicable law including, without limitation, the National Electrical Safety Code or OSHA.

3. Entergy does not warrant or represent that the Right-of-Way Area is safe or suitable for the Facilities or the use of same as contemplated by Owner, its employees, agents, contractors, subcontractors and their agents and employees, licensees or guests or any other party making use of the Right-of-Way Area with the permission of Owner.

4. Owner shall not make any material modifications to location or placement of the Facilities within the Right-of-Way Area without the advance written consent of Entergy, so long as said use does not unreasonably interfere with Owner's use.

5. Owner acknowledges that Entergy's use of the Right-of-Way Area is for the transmission of high voltage electricity and that contact with or close proximity to Entergy's facilities is dangerous to persons and property and can cause injury or death to persons and that the height of Entergy's electric lines varies depending upon weather and/or load conditions. Owner shall use and shall cause its employees, agents, contractors, subcontractors and their agents and employees, licensees or guests to use the highest standard of care when operating equipment under or near the electric lines of Entergy in the Right-of-Way Area to avoid damage to or outages on or interruption of service to said electric lines and to ensure the safety of all such parties.

6. Owner shall comply with all current and future laws, ordinances, rules and regulations that pertain to use of the Right-of-Way Area as contemplated hereunder. Owner shall conduct its operations within the Right-of-Way Area in conformity with the standards of good practice in the industry. Upon demand, Owner will comply with Entergy's instructions outlined in Exhibit "B". Owner shall reimburse Entergy for any damage to Entergy's facilities in the Right-of-Way Areas that occurs as a result of the installation, maintenance, repair, operation, use, replacement and/or removal of the Facilities in the Right-of-Way Area.

7. Owner agrees that in connection with the installation, maintenance, repair, operation, use, replacement and/or removal of the facilities within the Right-of-Way Area, to indemnify and hold Entergy harmless against any and all claims, demands, suits and judgments for damages for loss or liability on account of injuries to (including death of) persons or damage to property, including reasonable costs and expenses incidental thereto, resulting from the use of or activities or operations in the Right-of-Way Area by Owner, its employees, agents, contractors, subcontractors and their agents, employees, licenses or guests or any other party making use of the Right-of-Way Area, including Entergy; and to indemnify and hold Entergy harmless, from and

against any and all loss, damage, liability, cost or expense, including fines, penalty and clean-up costs relating to the environment or environmental damage or for the violation of any law or regulation resulting from the use of or activities or operations in the Right-of-Way Area by Owner. The indemnification of Entergy by Owner hereunder shall include but not be limited to the reasonable attorneys' fees and court costs incurred by Entergy or on Entergy's behalf in connection with any suit, claim, demand or judgment. The word "Entergy" as used in this paragraph shall include Entergy, Entergy's affiliated and associated companies, and the officers, directors, shareholders, agents, employees, representatives, licensees, invitees (express or implied) of each and their heirs, successors and assigns.

Notwithstanding, in no event shall Entergy be responsible for any of Owner's facilities, equipment, or landscaping that may be damaged by Entergy's use, maintenance, repair and operation of its electrical facilities and right of way.

8. Owner shall, at its own expense, maintain in force throughout the period of this Encroachment the following minimum insurance coverage's, with insurers authorized to do business in the State Arkansas and having an A.M. Best rating of A or better throughout the coverage term(s):

Commercial General Liability Insurance, including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification in this Encroachment, subject to policy terms and conditions), with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate for personal injury, bodily injury, including death, and property damage. Before exercising any of its rights under this Easement, and at the renewal of each insurance policy and in any event within thirty (30) days thereafter, the Owner shall provide certification of all insurance required in this Encroachment, executed by each insurer or by an authorized representative of each insurer.

Any policy written on a Claims First Made Basis shall be maintained in full force and effect for three (3) years after termination of this Encroachment, which coverage may be in the form of tail coverage or extended reporting period coverage, if agreed by the parties.

The requirements contained herein as to the types and limits of all insurance to be maintained by the Owner are not intended to and shall not in any manner, limit or qualify

the liabilities and obligations assumed by the Owner under this Encroachment. The Owner shall be responsible for its deductibles or retentions.

Before exercising any of its rights under this Easement, and at the renewal of each insurance policy and in any event within thirty (30) days thereafter, the Owner shall provide certification of all insurance required in this Encroachment, executed by each insurer or by an authorized representative of each insurer.

9. If Owner fails to comply with any obligation under this Agreement, such failure shall constitute an event of default. If Owner does not cure the default within sixty (60) days after receiving written notice of the default from Entergy, Entergy may terminate this Agreement and/or may pursue its rights and remedies under applicable law, provided, however, if the default is of such a nature that it cannot be cured within sixty (60) days and, if Owner has begun, but has not completed curing the default within the sixty-day cure period and is diligently pursuing the cure of the default to completion, Entergy shall not terminate this Agreement. Prior to terminating this Agreement based upon an event of default, Entergy shall provide a notice of its intent to terminate to Owner and provide Owner an additional thirty (30) day period to cure the default. If Owner has not cured the default within the additional thirty (30) day period or if the default is of such a nature that it cannot be cured within the additional thirty (30) day period and, if Owner has not commenced to cure the default and prosecuted the cure with due diligence, Entergy may terminate this Agreement without any further notice to Owner, provided, however, Owner shall not be required to remove, materially alter or modify the facilities as initially located and installed in accordance with paragraph 1 of this Agreement and/or any subsequent material modifications made thereto in compliance with paragraph 4 of this Agreement.

10. The waiver of a breach of any of the terms or conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as being a continuing or permanent waiver of any such terms or conditions or as a waiver of any other terms and conditions hereof, all of which shall be and remain in full force and effect notwithstanding any such waiver. In case of violation by Owner of any of the provisions of this Agreement, the mention herein of any right or

remedy of Entergy with respect thereto shall not preclude Entergy from exercising any other right or remedy to which Entergy might otherwise be entitled with respect to that or any other obligations of Owner except as otherwise limited by the express provisions of this Agreement.

11. This Agreement is made without any warranty of title as to the Right-of-Way Area, any warranty of fitness or condition, or any warranty of any kind by or recourse against Entergy whatsoever for breach of any warranty.

12. All notices required or permitted to be given hereunder shall be sent by (i) registered or certified mail, postage prepaid, or (ii) next day delivery service such as FedEx or Airborne Express, addressed to the respective parties as follows:

Entergy: Entergy Arkansas, Inc.
5115 Thibault Road
Little Rock, AR 72206
Attn: Supervisor of Transmission Grid

Owner: BLK Properties
308 Smokey Lane
North Little Rock, AR 72117
Attn: Butachaiah Garlapati

Contact of a party by telephone and/or facsimile shall not constitute legal notice to such party for purposes of this Agreement. Each party may change its address for receipt of notice by giving the other party notice of the change of address. Notice under this Agreement shall be deemed given upon the earlier of the date of delivery or the date upon which delivery is refused.

13. Grantee shall give Grantor advance written notice of its intent to transfer or assign this agreement.

14. To facilitate the execution, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which counterparts taken as a whole will constitute one and the same agreement of the parties. The parties agree that the signature pages of each party may be detached from separate individually executed counterparts of this Agreement and combined to form one or more fully executed original counterparts.

15. Failure by either party to insist upon the strict performance of any of the terms, covenants or conditions of this Agreement, or failure or delay in the exercise of any rights or remedies either as provided by law or herein as to any one instance of breach by the other party, or failure to notify the other party of any one instance of breach, shall not release the breaching party from any of its covenants or obligations hereunder, and shall not be deemed a waiver of any rights and remedies hereunder, or as a waiver of any other prior or subsequent default hereunder.

16. This Agreement and attached exhibits, together with the Right-of-Way Permit, constitute the entire agreement between Owner and Entergy with respect to the access to and use of the Right of Way Area. Owner and Entergy acknowledge that other than the Right-of-Way Permit and this Agreement, there are no other prior understandings or oral agreements between the parties hereto.

17. This Agreement may not be changed or terminated orally, but only by a written instrument of change, modification, waiver or termination executed by the party against whom enforcements of any change, modification, waiver or discharge is sought, except in the event of a termination pursuant to Section 9 which may be executed solely by Owner.

18. All of the terms and conditions herein contained, and all of the obligations herein assumed, shall inure to the benefit of and be binding on the successors and assigns of the respective parties.

19. All parts of the Right-of-Way Area, used for construction or maintenance of the Facilities, shall be restored to as near its' original state as practicable.

20. Owner shall furnish to Entergy three copies of a current survey prepared for Owner's proposed development of the subject property. Entergy shall have the right to enter Owner's property during construction of the Facilities or upon completion thereof to verify all Facilities are constructed in accordance with this Agreement. Entergy shall further have the right to use the survey to update it for its own purposes at Entergy's sole cost and expense.

21. This Agreement shall be governed by and construed under the laws of the State of Arkansas.

IN WITNESS WHEREOF, this instrument is executed on the 29th day of September,
2016 in accordance with the terms set forth above,

ENTERGY ARKANSAS, INC.

BY: 

Drew Clem
Manager, Transmission Substation
Grid

BLK Properties, LLC

BY: 

Name: Butchiah Garlapati

Title: Member

Exhibit "B"

- There shall be no vegetation planted and maintained within Entergy's Right of Way that has the possibility to reach or exceed a growth of 8(eight) feet in height or planted in a manner that will restrict access to facilities and Right of Way.
- There shall be no permanent structures, equipment, or above ground facilities installed or stored within Entergy's Right of Way including, but not limited to, flag poles, light poles, dumpsters, storage facilities, pipes, signs, fences, gates, or anything that Entergy considers to be restrictive to access to or be hazard to the operation and safety of the Transmission line.
- Entergy reserves the right to utilize property improvements, such as the parking lot and the access drive adjoining and located within the Right of Way for ingress and egress to and from the Right of Way without prior notification to owner.
- Entergy requires an as-built survey containing all facilities and elevations within the Right of Way be provided within 60 (sixty) days of completing construction.
- There shall be no grade changes made within the Right of Way, other than what is indicated on attachments Exhibit "A" and "A-1", without prior written approval from Entergy.

EXHIBIT "A-1"

NO.	REVISION	DATE	BY	CHKD.



ARKANSAS PAIN CENTER
 AMBULATORY SURGERY CENTER
 4331 EAST 43RD STREET, NORTH LITTLE ROCK, AR

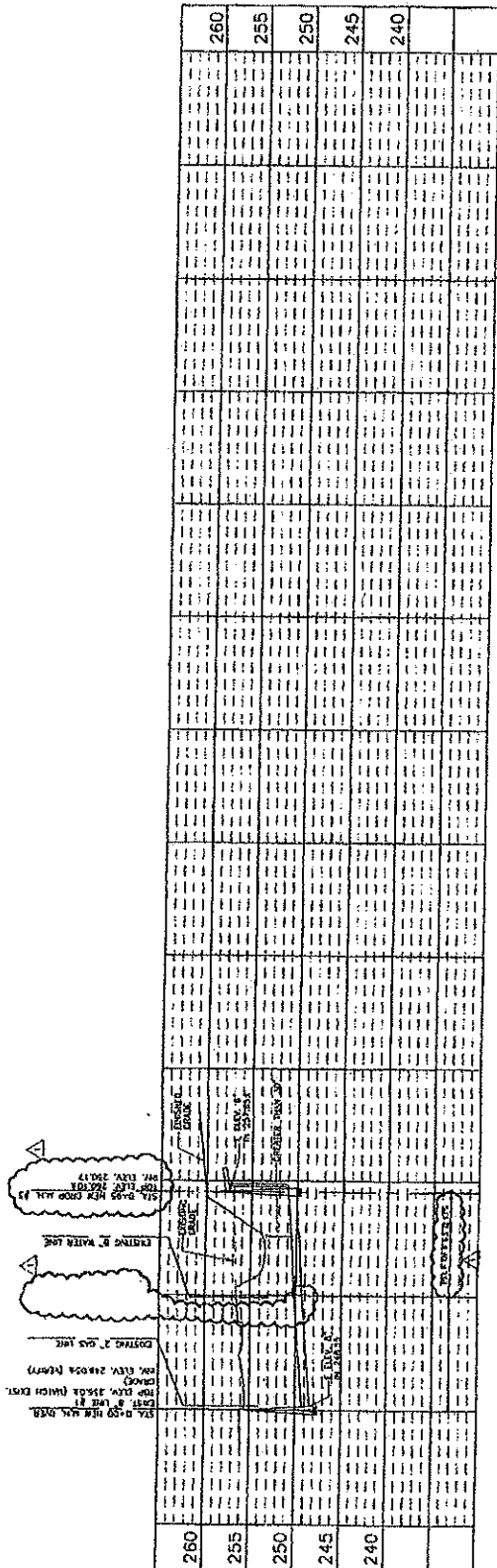
CROMWELL

2115 W. UNIVERSITY BLVD., SUITE 100, LITTLE ROCK, AR 72202
 (501) 325-1111
 www.cromwell.com

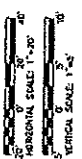
Project No. 4331-01
 Drawing No. 211-501

SANITARY SEWER
 PROFILE

CU301



SANITARY SEWER PROFILE



Public Hearing Case # 2017-11



EXHIBIT
"B"
tabbles



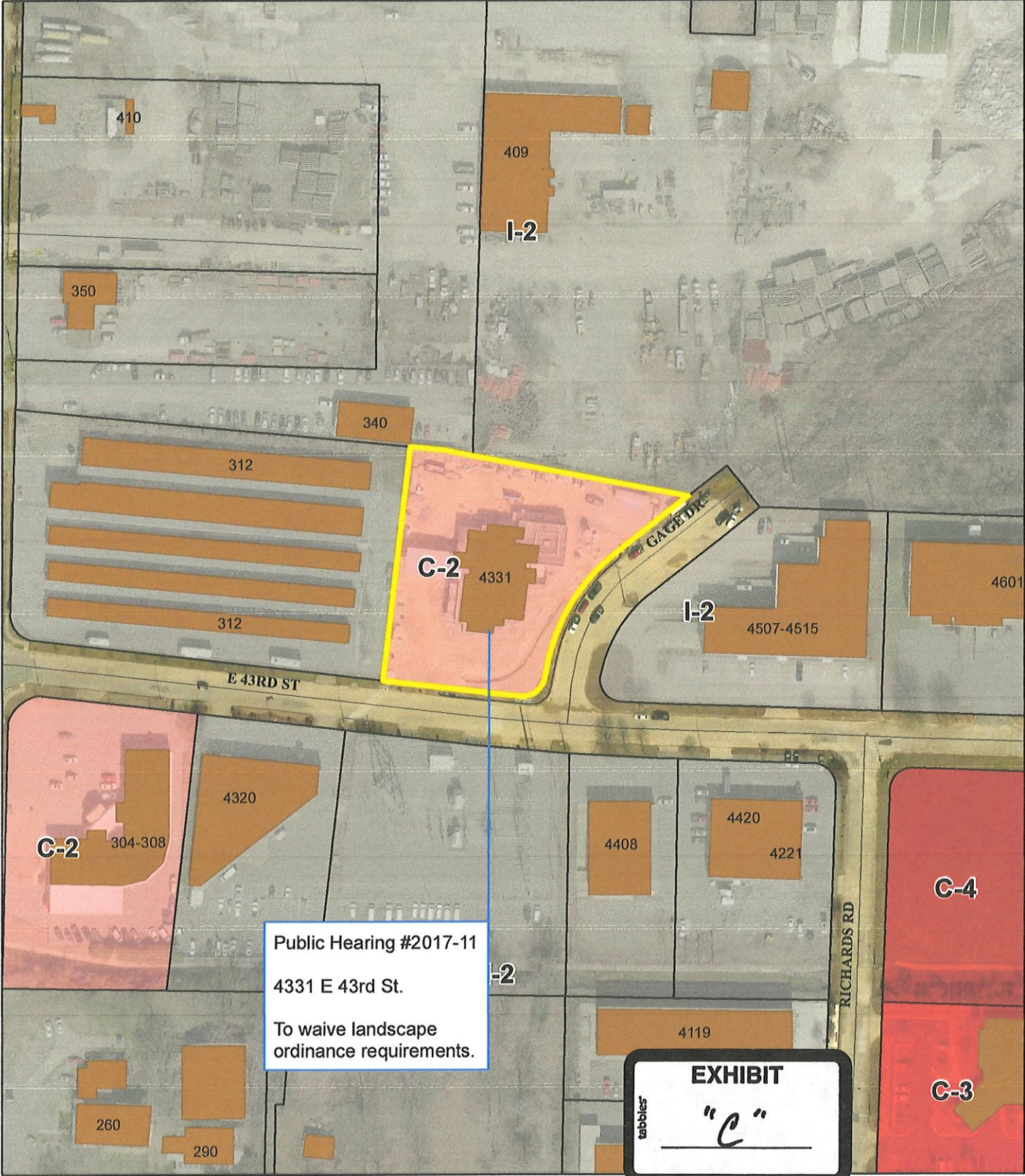
Ortho Map

1 inch = 50 feet



Date: 6/14/2017

Public Hearing Case # 2017-11



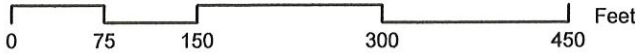
Public Hearing #2017-11
4331 E 43rd St.
To waive landscape ordinance requirements.

EXHIBIT
tabbles
"c"



Zoning Map

1 inch = 150 feet



Date: 6/14/2017