



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve and Accept Settlement Agreement, Budget Addition, and Easement Related to Petkus Property
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Presenter:	Tom Bruhl
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Please check appropriate box:

	Government Operations	<input checked="" type="checkbox"/>	Government Services 09.22.14
	Planning & Development		City Council
	Public Hearing		

Estimated Cost:	\$85,000	Budgeted:	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>
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If NO, please explain how item will be funded:

Funding for this easement agreement will come from the use of a restricted cash account that had been established to fund both unanticipated workers comp and general liability claims.

Executive Summary:

In the late 1990s, as part of the Pheasant Run Trails development, electric utility lines and equipment, and storm sewer structures were placed slightly over the property line and onto property owned by Ms. Petkus. This was discovered about a year ago. The City has negotiated a settlement to obtain an easement on private property owned by Mrs. Petkus, that will allow the City to maintain City owned electric and storm sewer infrastructure within the easement boundaries. The emergency siren that was also placed slightly on the Petkus property has been relocated with assistance from the Fire Department.

Attachments: *(please list)*

Budget Addition, Settlement, Plat of Easement

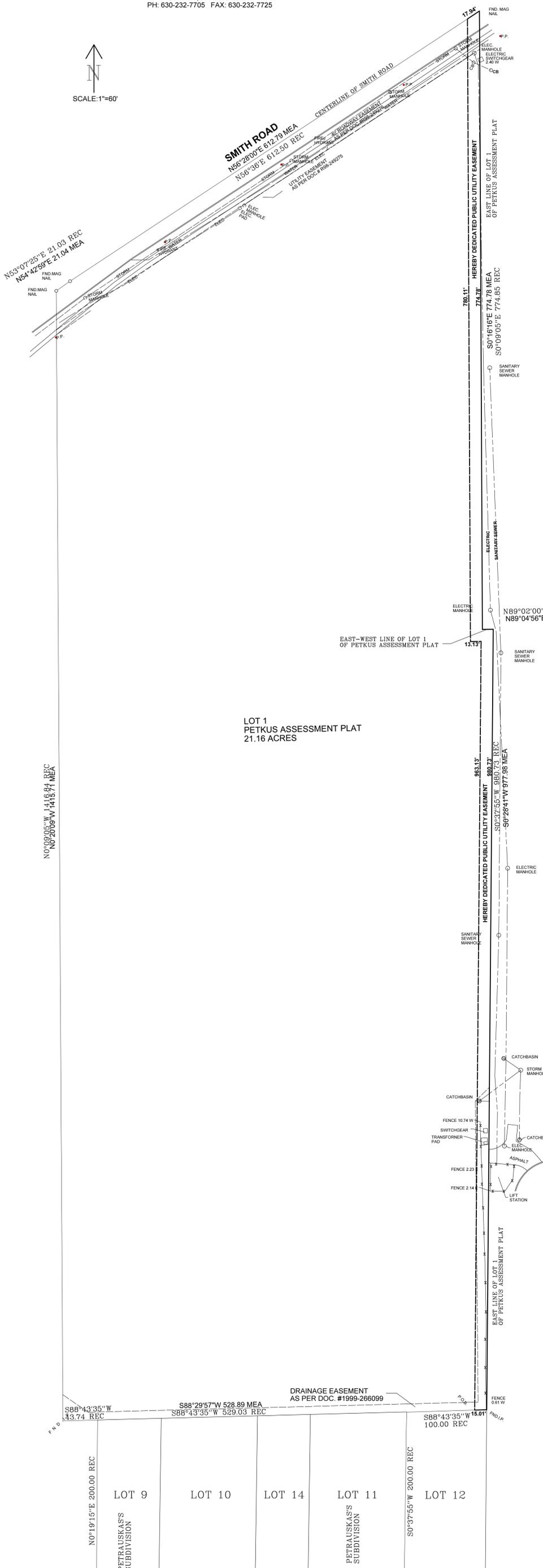
Recommendation / Suggested Action *(briefly explain):*

Recommendation to approve and accept Settlement Agreement, Budget Addition, and Easement related to Petkus Property, and Authorization of Mayor and City Clerk to Execute Same.

For office use only:

Agenda Item Number: 5.b

PLAT OF EASEMENT
DALE FLOYD LAND SURVEYING L.L.C.
2600 KESLINGER ROAD, SUITE A
GENEVA, ILLINOIS 60134
PH: 630-232-7705 FAX: 630-232-7725



15 FOOT PUBLIC UTILITY EASEMENT ALONG THE EAST LINE OF LOT 1 OF PETKUS ASSESSMENT PLAT BEING A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 4, 1978 AS DOCUMENT R78-27369, IN DUPAGE COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF PETKUS ASSESSMENT PLAT 15.01 FEET WEST OF THE SOUTHEAST CORNER OF SAID PETKUS ASSESSMENT PLAT; THENCE NORTH 88 DEGREES, 29 MINUTES, 57 SECONDS EAST ALONG SAID SOUTH LINE 15.01 FEET TO THE SOUTHEAST CORNER OF SAID PETKUS ASSESSMENT PLAT; THENCE NORTH 0 DEGREES, 28 MINUTES, 41 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 1 OF PETKUS ASSESSMENT PLAT 977.98 FEET TO A BEND POINT IN SAID EAST LINE; THENCE NORTH 89 DEGREES, 04 MINUTES, 56 SECONDS EAST ALONG AN EAST-WEST LINE OF SAID LOT 1, 13.53 FEET; THENCE NORTH 0 DEGREES, 16 MINUTES, 16 SECONDS EAST ALONG SAID EAST LINE 774.78 FEET TO THE CENTER LINE OF SMITH ROAD; THENCE SOUTH 56 DEGREES, 28 MINUTES, 00 SECONDS EAST ALONG SAID CENTER LINE 17.94 FEET, TO A POINT ON SAID CENTER LINE THAT IS 15 FEET WEST OF AND PERPENDICULAR TO SAID EAST LINE OF LOT 1; THENCE SOUTH 0 DEGREES, 16 MINUTES, 16 SECONDS WEST ALONG A LINE 15.00 FEET EAST OF AND PARALLEL TO SAID EAST LINE OF SAID LOT 1, 780.11 FEET TO A BEND POINT IN SAID PARALLEL LINE; THENCE NORTH 89 DEGREES, 04 MINUTES, 56 SECONDS EAST ALONG SAID PARALLEL LINE 13.13 FEET; THENCE SOUTH 02 DEGREES, 28 MINUTES, 41 SECONDS WEST ALONG SAID PARALLEL LINE 963.13 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

SURVEYOR'S CERTIFICATE
STATE OF ILLINOIS)
COUNTY OF DUPAGE) ss.

"This is to certify that I, DALE A. FLOYD Illinois Land Surveyor No. 035-002876, have surveyed above described property and have located the improvements thereon shown by the plat hereon drawn which is a correct representation of said survey and locations.
"Given under my hand and seal at GENEVA Illinois, this _____ day of _____, A.D. 20____"

Illinois Professional Land Surveyor
No. 035-002876 "

LICENSE EXPIRATION DATE: 11-30-2014

OWNER'S CERTIFICATE
STATE OF ILLINOIS)
COUNTY OF DUPAGE) ss.

"This is to certify that the undersigned is the owner of the land described in the Plat of Easement and City of St Charles has caused the same to be surveyed. Owner has accordingly dedicated as indicated thereon, for the uses and purposes therein set forth, and does hereby acknowledge and adopt the same.

Dated this _____ day of _____, A.D. 20____"

NOTARY CERTIFICATE
STATE OF ILLINOIS)
COUNTY OF DUPAGE) ss.

"I, _____, a notary public, in and for said county, in the state aforesaid, do hereby certify that _____ personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such owners, appeared before me this day in person and acknowledged that they signed and delivered the annexed plat as their own free and voluntary act for the uses and purposes therein set forth.

"Given under my hand and Notarial Seal this _____ day of _____, A.D. 20____, at _____.

Notary Public

CITY COUNCIL CERTIFICATE

"Approved and accepted this _____ day of _____, A.D. 20____"

CITY COUNCIL OF CITY OF
ST. CHARLES, ILLINOIS

Mayor

ATTEST: _____
City Clerk

PUBLIC UTILITY EASEMENT PROVISIONS

A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY GRANTED TO THE CITY OF ST. CHARLES AND TO ALL PUBLIC UTILITY COMPANIES OF ANY KIND OPERATING UNDER FRANCHISE GRANTING THEM EASEMENT RIGHTS FROM SAID CITY OF ST. CHARLES, INCLUDING BUT NOT LIMITED TO, AMERITECH AND NICOR AND TO THEIR SUCCESSORS AND ASSIGNS (HEREIN COLLECTIVELY REFERRED TO AS "GRANTEES") IN, UPON, ACROSS, OVER, UNDER, AND THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "PUBLIC UTILITY EASEMENT" ON THE PLAT OF EASEMENT HEREON DRAWN FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, INSPECTING, OPERATING, REPLACING, RENEWING, ALTERING, ENLARGING, REMOVING, REPAIRING, CLEANING, AND MAINTAINING ABOVE GROUND AND UNDERGROUND ELECTRICAL SYSTEMS, CABLE TELEVISION, COMMUNICATION, GAS, TELEPHONE OR OTHER UTILITY LINES OR APPURTENANCES, SANITARY AND STORM SEWERS, DRAINAGE WAYS, STORM WATER DETENTION AND RETENTION, WATER MAINS AND ANY AND ALL MANHOLES, HYDRANTS, PIPES, CONNECTIONS, CATCH BASINS, BUFFALO BOXES AND WITHOUT LIMITATION, SUCH OTHER INSTALLATIONS AS MAY BE REQUIRED TO FURNISH PUBLIC UTILITY SERVICE TO ADJACENT AREAS. THE RIGHT IS ALSO HEREBY GRANTED TO SAID GRANTEEES TO CUT DOWN, TRIM, OR REMOVE ANY TREES, SHRUBS, OR OTHER PLANTS THAT INTERFERE WITH THE OPERATION OF OR ACCESS TO SAID UTILITY INSTALLATIONS, WITHOUT LIMITATION, IN, ON, UPON OR ACROSS, UNDER, OR THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "PUBLIC UTILITY EASEMENT" IN THIS INSTRUMENT. IN THE EVENT THAT ANY MAINTENANCE IS PERFORMED WITHIN THE UTILITY EASEMENT, THE CITY OF ST. CHARLES WILL HAVE NO OBLIGATION WITH RESPECT TO SURFACE RESTORATION INCLUDING, BUT NOT LIMITED TO, THE RESTORATION, REPAIR, OR REPLACEMENT OF ANY LANDSCAPING PROVIDED, HOWEVER, THE GRANTEEES SHALL BE OBLIGATED FOLLOWING ANY SUCH WORK, TO BACKFILL AND MOUND SO AS TO RESTORE SUITABLE DRAINAGE, REMOVE DEBRIS, AND LEAVE THE AREA IN GENERALLY CLEAN AND WORKMANLIKE CONDITION. NO PERMANENT BUILDINGS OR TREES SHALL BE PLACED ON SAID EASEMENTS, BUT THE EASEMENT AREAS MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING, PAVING, FENCES, SIDEWALKS, CURBING, AND OTHER PURPOSES THAT DO NOT INTERFERE WITH THE AFORESAID USES AND RIGHTS, WHERE AN EASEMENT IS USED FOR STORM OR SANITARY SEWERS, OTHER UTILITY INSTALLATIONS SHALL BE SUBJECT TO THE PRIOR APPROVAL OF SAID CITY OF ST. CHARLES SO AS NOT TO INTERFERE WITH THE GRAVITY FLOW IN SAID SEWER OR SEWERS. UTILITY INSTALLATIONS, OTHER THAN THOSE MANAGED BY THE CITY OF ST. CHARLES, SHALL BE SUBJECT TO THE APPROVAL OF THE CITY OF ST. CHARLES, AS TO DESIGN AND LOCATION, AND ALL OTHER INSTALLATIONS ARE SUBJECT TO THE ORDINANCES OF THE CITY OF ST. CHARLES. EMERGENCY WARNING SIREN POLES AND RELATED EQUIPMENT ARE PROHIBITED WITHIN THE EASEMENT.

WHEREAS, there have been diverse claims and demands asserted by Petkus against the City based upon the City's encroachments on the Subject Property; and

WHEREAS, Petkus and the City desire to settle and resolve all outstanding claims by Petkus against the City relative to the City's use of the Subject Property, to provide for the removal by the City of the emergency weather warning siren located on the Subject Property, to provide all necessary temporary and permanent easements required for the removal of the siren, and for the for the remaining public improvements located on the Subject Property, and to provide for the payment by the City to Petkus of just compensation for the granting of such permanent easements, and to provide for a mutual release of all claims; and

WHEREAS, Petkus has executed and delivered to the City a temporary construction easement to permit the removal of the emergency weather warning siren from the Subject Property; and

WHEREAS, the City has on or about July 9, 2014 removed the emergency weather warning siren from the Subject Property;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the sufficiency and adequacy of which is hereby confessed, **BARBARA ANN PETKUS** and **THE CITY OF St. CHARLES**, a municipal corporation, do hereby agree as follows:

SECTION 1. INCORPORATION OF RECITALS. The facts and statements contained in the above and foregoing "Whereas" clauses are incorporated in this Agreement as if fully set forth.

SECTION 2. SUBJECT PROPERTY. The Subject Property is legally described on Exhibit “A” attached hereto and made a part hereof, and initialed by the parties.

SECTION 3. REMOVAL OF EMERGENCY WEATHER WARNING SIREN. Petkus has heretofore executed and delivered to the City a Temporary Construction Easement (“Siren Easement”) over the Easterly 40 feet of the Southerly 300 feet of the Subject Property to allow the City to remove and relocate the Emergency Weather Warning Siren (“Siren”). The City has accepted the Siren Easement and has relocated the Siren beyond the Subject Property on or about July 9, 2014. The Siren Easement is attached to this Agreement as Exhibit “B” and the terms and conditions thereof are incorporated in this Agreement as if fully set forth, including specifically the condition that the Siren shall be located so that the fall zone for the relocated siren is not within any portion of the Subject Property. The parties agree that the Siren Easement has fulfilled its purpose and is now terminated. **No fire or emergency weather warning siren shall be re-installed or erected on the Subject Property, or the Utility Easement, nor shall any part of the fall zone lie within any portion of the Subject Property.**

SECTION 4. GRANT OF PERMANENT EASEMENTS BY PETKUS. Petkus agrees to grant to the City a permanent, restricted, non-exclusive easement (the “Utility Easement”) for the City electrical boxes and switch gear and underground electrical cables, and for the storm sewer catch basin, water pipes and electrical wiring presently located on the Subject Property (the “City Utilities”). The Plat of Utility Easement prepared by Dale Floyd & Associates dated September __, 2014 is attached hereto as Exhibit “C” and made a part hereof. The agreed location of the City Utilities is depicted on Exhibit “C.” **Reasonable notice shall be given by the City to Petkus of any intended repair, maintenance, landscape or excavation work in the Utility Easement, prior to any work performed.**

SECTION 5. PAYMENT OF JUST COMPENSATION BY THE CITY. Upon execution and delivery to the City by Petkus of the Utility Easement, the City shall pay to Petkus the sum of **Eighty-five Thousand Dollars (\$85,000.00)** (the “Compensation Payment”) as full, fair, and just compensation to Petkus for the Utility Easement, and in full and complete compensation and satisfaction for any and all claims arising from the City's installation and construction of the Siren and the City Utilities. The City shall furnish Petkus with an IRS Form 1099 in accordance with Internal Revenue Service Regulations.

SECTION 6. EXECUTION, DELIVERY AND RECORDING OF DOCUMENTS. Petkus shall execute and deliver the Utility Easement contemporaneously with the execution and exchange of this Agreement and delivery of the Compensation Payment. The City shall cause the Utility Easement to be recorded at the City’s expense and a certified copy thereof furnished to Petkus. This Agreement and the Siren Easement shall not be recorded, but **the City shall record at the City’s expense a Memorandum of this Agreement acceptable to counsel for the Parties.**

SECTION 7. MUTUAL RELEASE OF CLAIMS. In consideration of the execution of this Agreement by Petkus and the promises contained herein, The City of St. Charles hereby releases and forever discharges Petkus, and her successors, assigns and/or administrators, of and from all claims, damages, liability, and/or causes of action which have or could have been or which may hereafter accrue, arise from, grow out of or relate in any way whatsoever to, the occupation or use of the Subject Property by the City, excepting the enforcement of this Agreement (the “Released Claims”). It is the specific intention and purpose of this undertaking of release that, other than a claim to enforce this Agreement, St. Charles fully and completely releases and discharges Petkus from any and all claims and causes of action of any kind or nature whatsoever arising, and, further, St. Charles

specifically waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against Petkus that has existed or may exist to the date hereof arising out of the Agreement, and has been, through oversight or error or intentionally or unintentionally, omitted from this release, excepting enforcement of this Agreement.

In consideration of the execution of this Agreement by St. Charles and the promises contained herein, Petkus hereby releases and forever discharges St. Charles, and its current and former elected officials, current and former employees, successors, assigns and/or administrators, of and from all claims, damages, liability, and/or causes of action which have or could have been asserted by Petkus or which may hereafter accrue, arise from, grow out of or relate in any way whatsoever to, the occupation or use of the Subject Property by the City (the "Released Claims"). It is the specific intention and purpose of this undertaking of release that Petkus fully and completely releases and discharges St. Charles from any and all claims and causes of action of any kind or nature whatsoever arising and, further, Petkus specifically waives any claim or right to assert any cause of action or alleged cause of action or claim or demand against St. Charles that has existed or may exist to the date hereof, whether known or unknown or whether, through oversight or error or intentionally or unintentionally, omitted from this release.

SECTION 8. REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT. The parties hereto warrant that no promise, agreement or inducement not herein expressed has been made to or by either of them. The City represents and warrants that this Agreement has been duly authorized by the corporate authorities of the City. Petkus represents and warrants that she has full power and authority to execute this Agreement and to grant the Utility Easement to the City.

SECTION 9. GOOD FAITH AGREEMENT; COMPROMISE OF DISPUTED CLAIMS; RULE OF CONSTRUCTION. The parties hereto covenant, agree, and declare that this Agreement is made and executed by them and on their behalf through their respective authorized representatives as their own free will and deed and that they are fully informed of the contents and meaning hereof and have so executed this release and settlement with full knowledge thereof. It is further understood and agreed that this Agreement has been made in good faith compromise of disputed claims and that it is a fair and reasonable settlement of the claims by and among the parties hereto. The parties and their counsel have had the opportunity to review and revise (or request revisions to) this Agreement and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable to the construction and interpretation of this Agreement. This Agreement shall be deemed to have been mutually prepared by the parties and shall not be construed against any of them by reason of authorship.

SECTION 10. CHOICE OF LAW. This Agreement is made, and shall in all aspects be performed, in the State of Illinois. The parties hereto agree that Illinois law shall govern the interpretation and enforcement of this Agreement, and that any action to enforce this Agreement shall be brought in the courts of the State of Illinois subject to the venue provisions thereof.

SECTION 11. ATTORNEY'S FEES AND COSTS. Each party shall bear its own costs and attorney's fees in connection with this Agreement, the Utility and Siren Easements, and the Released Claims.

SECTION 12. NOTICES. Any notices permitted or required pursuant to this Settlement

Agreement shall be given by electronic mail, with a copy sent by United States Mail, as follows:

If to Petkus:

Barbara Ann Petkus
P.O. Box 306
St. Charles, IL 60174
bpetkus@aol.com

with a copy to:

Kenneth C. Shepro
P.O. Box 760
Wayne, IL 60184
kcshepro@aol.com

If to the City:

City of St. Charles
Two East Main Street
St. Charles, IL 60174

Attention Mark Koenen – City Administrator

cao@stcharlesil.gov

with a copy to:

John M. McGuirk, City Attorney
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street – Suite G
St. Charles, IL 60174

jmc@hmcpc.com

SECTION 13. WAIVER; ENTIRE AGREEMENT. This Agreement, and the Exhibits incorporated herein constitute the entire agreement of the parties, and supersede any and all prior agreements, understandings or commitments, and no amendment or modification hereof shall be effective unless in writing and signed by all parties. In the event that there is a conflict between this Agreement and any of the Exhibits thereto, this Agreement shall control.

SECTION 14. SEVERABILITY. If any non-material part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with the laws of the State of Illinois, the validity of the remaining portions of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision.

SECTION 15. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Additionally, a copy or facsimile signature shall constitute an original signature and shall be sufficient to execute this Agreement. Execution may be effective upon exchange of emails.

WHEREFORE, the Parties have caused this Settlement Agreement and Mutual Release to be executed and delivered as of the date hereof.

Dated this _____ day of _____, 2014.

CITY OF ST. CHARLES, a municipal corporation

By: _____
RAYMOND ROGINA, Mayor

Attest:

free and voluntary act of the CITY OF ST. CHARLES, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, 2014.

Notary Public

DRAFT