

**City Council Agenda Items
and
Contracts, Leases or Agreements**

7/17/2012

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Utilities Capital Projects
Division

Utilities
Department

Action Required:

Resolution approving a settlement agreement with John David Brown concerning condemnation litigation filed as part of the Highway 265 (Crossover Road) water and sewer relocation project in a total amount of \$46,666.50. This amount reflects a \$19,066.50 increase above the \$27,600.00 previously placed on deposit with the court.

\$ 19,067
Cost of this request

5400.5640.5810.00
Account Number

08072-1
Project Number

\$ 1,685,327
Category / Project Budget

\$ 1,122,858
Funds Used to Date

\$ 562,469
Remaining Balance

W&S Relocations-2009 Bond Proceeds
Program Category / Project Name

Water & Wastewater
Program / Project Category Name

Water & Sewer
Fund Name

Budgeted Item

Budget Adjustment Attached

David Jurgens
Department Director

29 Jul 12
Date

Previous Ordinance or Resolution # 193-10

Paula Kelly
City Attorney

6-29-12
Date

Original Contract Date: 11/2/2010

Original Contract Number:

Paul a. Beck
Finance and Internal Services Director

6-30-2012
Date

Received in City Clerk's Office 06-29-12 P03:06 RCVD
Kim G.

Ann Man
Chief of Staff

7-2-12
Date


Received in Mayor's Office
ENTERED 6/29/12


Timothy Jordan
Mayor

7/2/12
Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff 

From: David Jurgens, Utilities Director 
Fayetteville Water and Sewer Committee

Date: June 29, 2012

Subject: Approval of a settlement agreement with John Brown for an easement on Highway 265 (Crossover Road)

RECOMMENDATION

Staff recommends accepting a settlement agreement with John David Brown concerning condemnation litigation filed as part of the Highway 265 (Crossover Road) water and sewer relocation project in a total amount of \$46,666.50. This amount reflects a \$19,066.50 increase above the \$27,600.00 previously placed on deposit with the court.

BACKGROUND

The Arkansas Highway and Transportation Department (AHTD) is widening Highway 265 (Crossover Road) from Mission Boulevard north to Joyce Boulevard. Due to AHTD's acquisition of additional right-of-way to widen the road, utility lines have been relocated outside of the expanded right-of-way. These utility easements are adjacent to the new highway right-of-way and/or existing utility easements. On November 2, 2010, in order to not delay the project, the City Council approved condemnation proceedings against several properties, including John David Brown. Negotiations with property owners continued; of the original nine that were submitted for condemnation, only two were filed in court, including Mr. Brown's.

DISCUSSION

After continued negotiations and through meetings with a court appointed mediator, staff and Mr. Brown have reached the attached settlement agreement, which reflects a \$ 19,066.50 increase in the compensation. Both sides feel this negotiated settlement is fair and reasonable. Mr. Brown's property is the one lot on this project that received the greatest negative impact from the combined highway and utility work, because the lot is very shallow but has a wide street frontage, as shown on the attached easement plat. A significant portion of the lot was removed for right of way; the remainder was impacted such that commercial development was no longer possible on the remainder. The land was zoned for commercial development. Water and sewer construction is completed; the contractor has been notified of the changes reflected in this settlement agreement.

BUDGET IMPACT

This settlement for \$46,666.50 is \$19,066.50 above the \$27,600.00 previously placed on deposit with the court. The additional \$19,066.50 is available within the approved project budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH JOHN DAVID BROWN, CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE HIGHWAY 265 WATER AND SEWER RELOCATION AND IMPROVEMENT PROJECT, IN THE TOTAL AMOUNT OF \$46,666.50.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves an agreement with John David Brown, in a total amount of \$46,666.50, as full and final settlement of condemnation litigation (City of Fayetteville v. Brown, Washington County Circuit Court Case No. CV 2011-1266-4) filed as part of the Highway 265 Water and Sewer Relocation and Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$19,066.50 over and above the \$27,600.00 placed on deposit with the court.

PASSED and APPROVED this 17th day of July, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

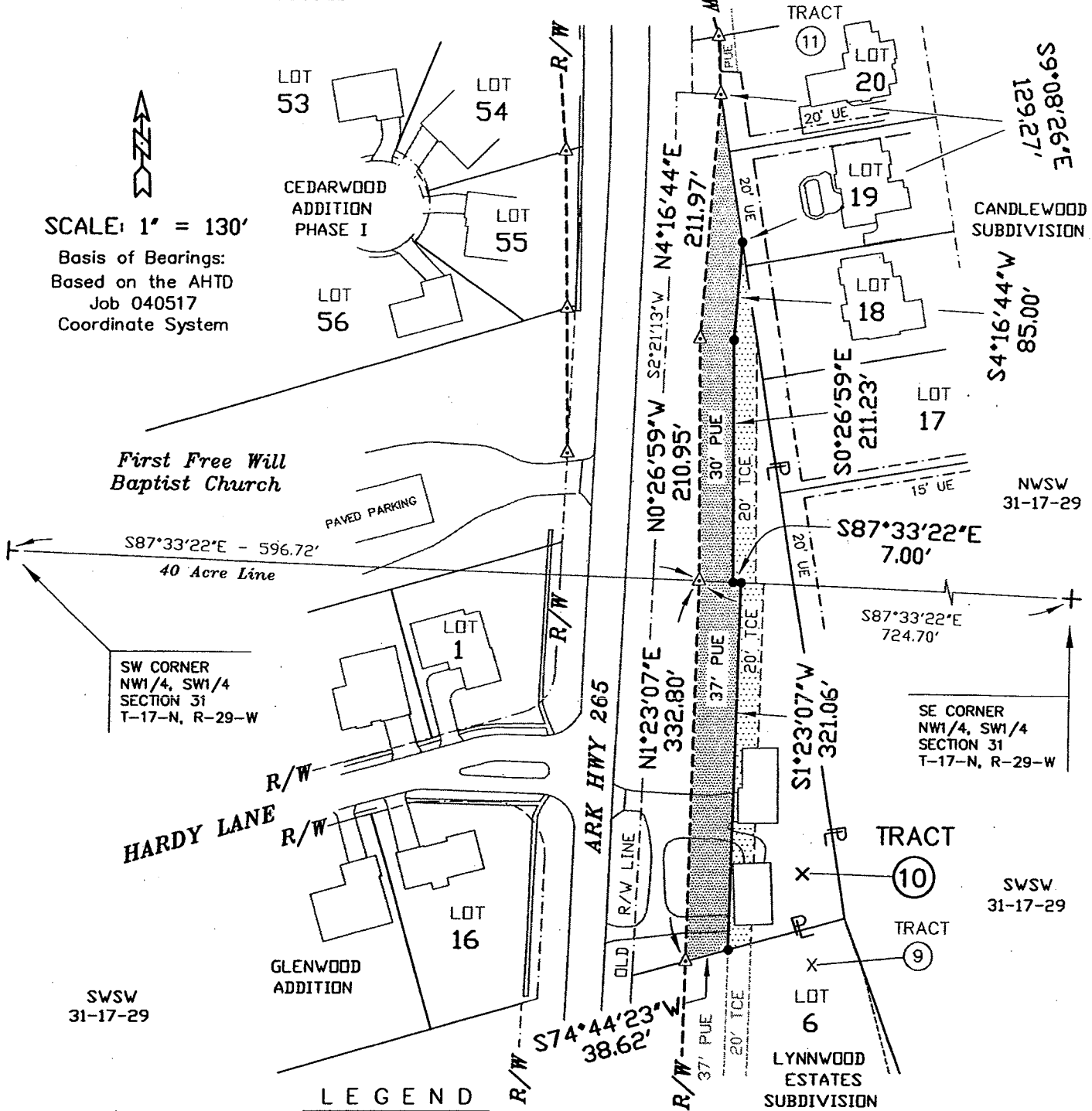
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

PUE - 22,883 SQ. FT. (0.53 AC.)
 TCE - 9,603 SQ. FT. (0.22 AC.)

UTILITY EASEMENT PLAT
 TRACT MAP NO. 10
 EXHIBIT "A"



SCALE: 1" = 130'
 Basis of Bearings:
 Based on the AHTD
 Job 040517
 Coordinate System



SW CORNER
 NW1/4, SW1/4
 SECTION 31
 T-17-N, R-29-W

SE CORNER
 NW1/4, SW1/4
 SECTION 31
 T-17-N, R-29-W

LEGEND

- Permanent Utility Easement
- Temporary Construction Easement
- Corner of Permanent Utility Easement
- Existing Utility Easement Line
- 765-13295-000 Tax Parcel Number
- 749-101 Deed Book & Page
- PUE - Permanent Utility Easement
- TCE - Temporary Construction Easement

**CITY OF
 FAYETTEVILLE**
 Water & Sewer Department

Property Owner :	John David Brown
Drawn by :	McClelland Consulting Engineers
Date:	Feb. 2010
Project No. 082146	Scale : 1" = 130'
	Tract No. 10

Project Name :		
Ar Hwy 265 W/S Line Relocation		
No.	Revisions	Date
AHTD Tract No. 20		

MEDIATION SETTLEMENT AGREEMENT

We, having participated in mediation on 3-30-12, and being satisfied that we have reached a fair and reasonable settlement, hereby agree as follows:

The City of Fayetteville agrees to pay \$46,666.50 ~~by~~
~~the City of Fayetteville~~ IN SETTLEMENT OF THE CITY OF
Fayetteville vs. JOHN DAVID BROWN Washco. CV. 2011-1266-4.
This is subject to City Council Approval and will be presented to the
City Council ^{OR ABOUT} ON July 17, 2012. John David Brown agrees to
ACCEPT SAID \$46,666.50 ~~by~~ ~~the City of Fayetteville~~ by
the City of Fayetteville and the presentation for approval on
July 17, 2012. Said \$46,666.50 ~~that~~ includes the \$27,600.00
already paid by the City to the Court and is NOT in addition
to the \$27,600. This will settle any and all claims by
John David Brown related to this lawsuit and the
property that is the subject of it.

We recognize that James M. Hall has not given us legal advice or legal counsel, and we understand that we have the right to consult with an attorney before signing this Agreement.

We intend the above Agreement to be a legally binding and enforceable settlement contract.

Dated this 30th day of MARCH, 2012. For: Fayetteville

John D. Brown

Wagner UTILITIES DIRECTOR

Dee D. Low, atty for John Brown

Dr. Kelly, Asst City Atty

James M. Hall
JAMES M. HALL, mediator

